LEGISLATIVE HEARING ON H.R. 2811, 2812, AND 2813, BILLS RELATED TO THE SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON
LABOR-MANAGEMENT RELATIONS

OF THE

'MITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2811, 2812, and 2813

\MEND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

HEARING HELD IN WASHINGTON, DC, JULY 16, 1985

Serial No. 99–37

Printed for the use of the Committee on Education and Labor

U.S. GOVERNMENT PRINTING OFFICE
54-587 O WASHINGTON : 1986

COMMITTEE ON EDUCATION AND LABOR

AUGUSTUS F. HAWKINS, California, *Chairman*

WILLIAM D. FORD, Michigan
JOSEPH M. GAYDOS, Pennsylvania
WILLIAM (BILL) CLAY, Missouri
MARIO BIAGGI, New York
AUSTIN J. MURPHY, Pennsylvania
DALE E. KILDEE, Michigan
PAT WILLIAMS, Montana
MATTHEW G. MARTINEZ, California
MAJOR R. OWENS, New York
FREDERICK C. BOUCHER, Virginia
CHARLES A. HAYES, Illinois
CARL C. PERKINS, Kentucky
TERRY L. BRUCE, Illinois
STEPHEN J. SOLARZ, New York
MERVYN M. DYMALLY, California
DENNIS E. ECKART, Ohio
TIMOTHY J. PENNY, Minnesota
CHESTER G. ATKINS, Massachusetts

JAMES M. JEFFORDS, Vermont
WILLIAM F. GOODLING, Pennsylvania
E. THOMAS COLEMAN, Missouri
THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
STEVE GUNDERSON, Wisconsin
STEVE BARTLETT, Texas
ROD CHANDLER, Washington
THOMAS J. TAUKE, Iowa
JOHN R. McKERNAN, Jr., Maine
RICHARD K. ARMEY, Texas
HARRIS W. FAWELL, Illinois
PAUL B. HENRY, Michigan

Subcommittee on Labor-Management Relations

WILLIAM (BILL) CLAY, Missouri, *Chairman*

WILLIAM D. FORD, Michigan
DALE E. KILDEE, Michigan
MARIO BIAGGI, New York
CHARLES A. HAYES, Illinois
MERVYN M. DYMALLY, California
CHESTER G. ATKINS, Massachusetts
MAJOR R. OWENS, New York
AUGUSTUS F. HAWKINS, California
Ex Officio

MARGE ROUKEMA, New Jersey
ROD CHANDLER, Washington
RICHARD K. ARMEY, Texas
STEVE BARTLETT, Texas
HARRIS W. FAWELL, Illinois
JAMES M. JEFFORDS, Vermont
Ex Officio

CONTENTS

LEGISLATIVE HEARING ON H.R. 2811, 2812, AND 2813, BILLS RELATED TO THE SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE SYSTEM

TUESDAY, JULY 16, 1985

House of Representatives,
Subcommittee on Labor-Management Relations,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2261, Rayburn House Office Building, Hon. William Clay (chairman of the subcommittee) presiding.

Members present: Representatives Clay, Kildee, Hayes, Atkins, Owens, Roukema, Chandler, Bartlett, and Fawell.

[Text of H.R. 2811, 2812, and 2813 follows:]

99TH CONGRESS
1ST SESSION

H. R. 2811

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the single-employer pension plan termination insurance program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1985

Mr. CLAY (for himself and Mrs. ROUKEMA) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Ways and Means

---

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the single-employer pension plan termination insurance program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as "Single-Employer Pension Plan Amendments Act of 1985".

TABLE OF CONTENTS

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) ADDITIONAL FINDINGS.—The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship, and to keep the premium costs of such system at a reasonable level; and

(3) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) DECLARATION OF POLICY.—It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans,

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits,

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hard-

ship, and to keep the premium costs of such system at a reasonable level, and

(5) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

SEC. 3. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Employee Retirement Income Security Act of 1974, unless otherwise specified.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—Section 4001(a) (29 U.S.C. 1301(a)) is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) 'substantial employer', for any plan year of a single-employer plan, means one or more persons—

"(A) who are contributing sponsors of the plan in such plan year,

"(B) who, at any time during such plan year, are members of the same affiliated group (within the meaning of subsection (a) of section 1563 of

the Internal Revenue Code of 1954, determined without regard to subsections (a)(4) and (e)(3)(C) of such section), and

"(C) whose required contributions to the plan for each plan year constituting one of—

"(i) the two immediately preceding plan years, or

"(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under that plan for such plan year;";

(2) in paragraph (11), by striking out "and";

(3) in paragraph (12), by striking out "corporation." and inserting in lieu thereof "corporation;" and

(4) by adding after paragraph (12) the following new paragraphs:

"(13) 'contributing sponsor', of a single-employer plan, means a person—

"(A) who is responsible for meeting the funding requirements under section 302 of this Act or section 412 of the Internal Revenue Code of 1954, or

"(B) who is a member of the controlled group of a person described in subparagraph (A)

and has employed a significant number of participants under such plan (in accordance with any regulations which may be prescribed by the corporation);

"(14) in the case of a single-employer plan—

"(A) 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person; and

"(B) the determination of whether two or more persons are under 'common control' shall be based on the principles which apply under subsection (b)(1) in determining whether employees of two or more trades or businesses (whether or not incorporated) are to be treated as employed by a single employer;

"(15) 'single-employer plan' means, except as otherwise specifically provided in this title, any plan which is not a multiemployer plan;

"(16) 'benefit entitlements', of a participant or beneficiary as of any date under a single-employer plan, means all benefits provided by the plan with respect to the participant or beneficiary, other than any health benefits which are not guaranteed by the corporation under section 4022 (determined without regard

to section 4022(b)(7)), for which the participant or beneficiary has satisfied, as of such date, all of the conditions required of him or her under the provisions of the plan to establish entitlement to the benefits, except for the submission of a formal application, retirement, completion of a required waiting period, death, or designation of a beneficiary;

"(17) 'amount of unfunded guaranteed benefits', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 4022, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to those benefits under section 4044;

"(18) 'amount of unfunded benefit entitlements', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit entitlements of the participant or beneficiary under the plan, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to those benefit entitlements under section 4044;

"(19) 'outstanding amount of benefit entitlements', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

"(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit entitlements of such participant or beneficiary under the plan, over

"(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of such participant or beneficiary which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;

"(20) 'person' has the meaning set forth in section 3(9);

"(21) 'affected party' means, with respect to a plan—

"(A) each participant in the plan,

"(B) each beneficiary under the plan,

"(C) each employee organization representing participants or beneficiaries in the plan, and

"(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person; and

"(22) 'section 4049 trustee', in connection with a terminated single-employer plan, means the trustee appointed under section 4049(a) in connection with the plan.".

(b) TECHNICAL CORRECTION OF ERROR IN MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.—Section 4001 is further amended by striking out the amendments made by section 402(a)(1)(F) of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1297) (adding new paragraphs after a subsection (c)(1)), and, in lieu

thereof, in subsection (b), by inserting "(1)" after "(b)" and by adding at the end of such subsection the following new paragraphs:

"(2) For purposes of this title, except as otherwise provided in this title, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of the Internal Revenue Code of 1954 (determined, in the case of a terminated plan, as if the plan had continued beyond the termination date).

"(3) For purposes of subtitle E, 'Secretary of the Treasury' means the Secretary of the Treasury or such Secretary's delegate.".

SEC. 5. INCREASE IN PREMIUM RATES; REVISION OF PROCEDURES FOR ESTABLISHING PREMIUM RATES; PREMIUM STUDY.

(a) PREMIUM INCREASE.—Section 4006(a)(3)(A)(i) (29 U.S.C. 1306(a)(3)(A)(i)) is amended by striking out, "for plan years beginning after December 31, 1977, an amount equal to $2.60" and inserting in lieu thereof "for plan years beginning after December 31, 1985, an amount equal to $8.50".

(b) CONFORMING AMENDMENT WITH RESPECT TO PLAN YEARS AFTER 1977.—Section 4006(c)(1) (29 U.S.C. 1306(c)(1)) is amended by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) in the case of each plan which was not a multiemployer plan in a plan year—

"(i) with respect to each plan year beginning before January 1, 1978, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and

"(ii) with respect to each plan year beginning after December 31, 1977, an amount equal to $2.60 for each individual who was a participant in such plan during the plan year, and".

(c) INCORPORATION OF CERTAIN FORMER PROVISIONS IN LIEU OF CROSS REFERENCE THERETO.—Section 4006(a) (29 U.S.C. 1306(a)) is amended—

(1) in paragraph (1), by striking out the last sentence; and

(2) by adding at the end thereof the following new paragraphs:

"(6) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of paragraph (7).

"(7)(A) The corporation may establish annual premiums composed of—

"(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for single-employer plans and not in excess of 0.025 percent for multiemployer plans, and

"(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for single-employer plans and for multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for single-employer plans and for multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

"(B) The corporation may establish annual premiums based on—

"(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

"(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

"(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

"(8) The corporation shall by regulation define the terms 'value of the assets' and 'present value of the benefits of the plan which are guaranteed' in a manner consistent with the purposes of this title and the provisions of this section.".

(d) APPROVAL BY JOINT RESOLUTION OF RECOMMENDATIONS OF THE PENSION BENEFIT GUARANTY CORPORATION.—

(1) The last sentence of subsection (a)(2) of section 4006 (29 U.S.C. 1306(a)(2)), is amended by striking out "the Congress approves such revised schedule by a concurrent resolution" and inserting in lieu thereof "a joint resolution approving such revised schedule is enacted".

(2) Subsection (a)(4) of section 4006 (29 U.S.C. 1306(a)(4)) is amended by striking out "approval by the Congress" and inserting in lieu thereof "the enactment of a joint resolution".

(3) Subsection (b)(3) of section 4006 (29 U.S.C. 1306(b)(3)) is amended by striking out "concurrent" and substituting in lieu thereof "joint", and deleting "That the Congress favors the" and inserting in lieu thereof "The", and inserting "is hereby approved" before the period preceding the quotation marks.

(4) Subsection (f)(2)(B) of section 4022A (29 U.S.C. 1322a(f)(2)(B)) is amended by striking out "Congress by concurrent resolution" and inserting in lieu thereof "the enactment of a joint resolution".

(5) Subsection (f)(2)(C) of section 4022A (29 U.S.C. 1322a(f)(2)(C)) is amended by striking out "approved" and inserting in lieu thereof "so enacted".

(6) Subsection (f)(3)(B) of section 4022A (29 U.S.C. 1322a(f)(3)(A)) is amended by striking out "Congress by a concurrent resolution" and inserting in lieu thereof "enactment of a joint resolution".

(7) Subsection (f)(4)(A) of section 4022A (29 U.S.C. 1322a(f)(4)(A)) is amended by striking out "concurrent" and inserting in lieu thereof "joint".

(8) Subsection (f)(4)(B) of section 4022A (29 U.S.C. 1322a(f)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in lieu thereof "joint", by striking out "That the Congress favors the" and inserting in lieu thereof "The", and by

inserting "is hereby approved" immediately before the period preceding the quotation marks.

(9) Subsection (g)(4)(A)(ii) of section 4022A (29 U.S.C. 1322a(g)(4)(A)(ii)) is amended by striking out "concurrent" and inserting in lieu thereof "joint", and by striking out "adopted" and inserting in lieu thereof "enacted".

(10) Subsection (g)(4)(B) of section 4022A (29 U.S.C. 1322a(g)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in lieu thereof "joint", by striking out "That the Congress disapproves the" and inserting in lieu thereof "The", and by inserting "is hereby disapproved" immediately before the period preceding the quotation marks.

(e) EFFECTIVE DATE.—The amendments made by the preceding provisions of this section shall be effective for plan years commencing after December 31, 1985.

(f) SINGLE-EMPLOYER PENSION PLAN TERMINATION INSURANCE PREMIUM STUDY.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, an advisory council, to be appointed by the chairmen of the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and

the Committee on Labor and Human Resources and the Committee on Finance of the Senate, shall conduct a study of the premiums established under the single-employer pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974.

(2) ADVISORY COUNCIL.—The advisory council shall be composed of an equal number of representatives of single-employer plan sponsors, employee organizations representing single-employer plan participants, and the general public who are experts in the matters to be considered in the study. The members of the advisory council shall serve without compensation, except that, while away from their homes or regular places of business in the performance of services for the advisory council, such members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(3) MATTERS TO BE STUDIED.—The advisory council shall specifically consider in its study the following matters:

(A) the effect of the amendments made by this Act on the long-term stability of the single-employer pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974;

(B) the manner in which premium levels are set under such program;

(C) the assumptions and methods used in the valuation of the assets and liabilities of such program and the appropriateness of such assumptions and methods in establishing single-employer plan termination insurance premiums; and

(D) alternatives to the current statutory mechanism with respect to proposals for changes in the premium levels under such program.

(4) SUBMISSION OF REPORT.—The advisory council's report under this subsection, together with any recommendations for statutory changes, shall be submitted not later than two years after the date of the enactment of this Act to the Speaker of the House of Representatives and the President pro tempore of the Senate.

(5) COOPERATION BY THE PENSION BENEFIT GUARANTY CORPORATION AND OTHER FEDERAL AGENCIES.—The Pension Benefit Guaranty Corpora-

tion shall cooperate with the advisory council in carrying out the requirements of this section. In order to avoid unnecessary expense and duplication, to the extent not otherwise prohibited by law, the Corporation and any other Federal agency shall provide to the advisory council any data, analyses, or other relevant information related to the matters to be studied.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the advisory council, for each of the fiscal years beginning October 1, 1985, and October 1, 1986, respectively, such sums as are necessary to carry out the requirements of this subsection.

SEC. 6. CLARIFICATION OF AUTHORITY TO FREEZE PLANS.

(a) IN GENERAL.—Section 4001 (29 U.S.C. 1301) (as amended by section 4) is further amended by adding at the end thereof the following new subsection:

"(c)(1) For purposes of this title, the term 'terminate', when used in connection with a single-employer plan, means to terminate in accordance with section 4041 or 4042.

"(2) The adoption and operation of a provision of a single-employer plan amendment is not a termination for purposes of this title if the sole effect of the provision is to provide that some or all service performed on or after a specified date (which is or follows the effective date of the amendment)

will not be taken into account under the plan solely for purposes of determining (in accordance with section 204 of this Act or section 411(b) of the Internal Revenue Code of 1954) benefits accrued on or after such specified date.".

(b) NOTICE REQUIREMENTS.—Section 204 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) A plan may not be amended on or after the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985 so as to provide that some or all service performed on or after a specified date (which is or follows the effective date of the amendment) will not be taken into account under the plan for purposes of determining (in accordance with this section) benefits accrued on or after such specified date, unless, after adoption of the plan amendment and not less than 60 days before the effective date of the plan amendment, the plan administrator provides to each affected party (as defined in section 4001(a)(20)) a written notice setting forth the plan amendment and its effective date.".

SEC. 7. GENERAL REQUIREMENTS RELATING TO TERMINATION OF SINGLE-EMPLOYER PLANS BY PLAN ADMINISTRATORS.

(a) IN GENERAL.—Section 4041 (29 U.S.C. 1341) is amended by striking out subsections (a) through (c) and inserting in lieu thereof the following:

"SEC. 4041. (a) GENERAL RULES GOVERNING SINGLE-EMPLOYER PLAN TERMINATIONS.—

"(1) EXCLUSIVE MEANS OF PLAN TERMINATION.—Except in the case of a termination for which proceedings are otherwise instituted by the corporation as provided in section 4042, a single-employer plan may be terminated only in a standard termination under subsection (b) or a distress termination under subsection (c).

"(2) 90-DAY NOTICE TO AFFECTED PARTIES.—Not less than 90 days before the proposed termination date of a plan termination under subsection (b) or (c), the plan administrator shall provide to each affected party a written notice stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

"(3) PROCEDURE IN THE EVENT OF RELATED ADJUDICATORY PROCEEDINGS.—

"(A) PROCEDURE IN THE CASE OF STANDARD TERMINATION.—In any case in which, during the period beginning on the date on which the plan administrator provides the notice required under paragraph (2) and ending on the proposed termination date specified in such notice, the plan administrator receives written notice from an affected party that there is pending a related adjudicatory proceeding with respect to the proposed standard termination of the plan under subsection (b), the plan administrator—

"(i) shall suspend the termination, by refraining from further processing or implementing the termination during the pendency of such proceeding, or

"(ii) may proceed with the termination, except that, in so proceeding, the plan administrator shall take such actions (including, but not limited to, providing for segregation of plan assets or maintenance of plan records) as are necessary and appropriate to assure that the plan may be effectively restored if the plan is finally determined in any such proceeding to have been terminated in violation of the contractual or statutory

rights of any affected party and is ordered in such proceeding to be restored.

During any period of time for which the plan administrator suspends the termination pursuant to clause (i), any applicable time limitation in the termination procedure shall cease to run.

"(B) PROCEDURE IN THE CASE OF DISTRESS TERMINATION.—In the case of a related adjudicatory proceeding with respect to a proposed distress termination of the plan under subsection (c), subparagraph (A) shall apply with respect to such termination and proceeding in the same manner and to the same extent as it applies in the case of a standard termination, except that any reference in subparagraph (A) to the plan administrator shall be considered a reference to the plan administrator and to the corporation or other person serving as trustee under section 4042.

"(C) RELATED ADJUDICATORY PROCEEDING.—For purposes of this paragraph, the term 'related adjudicatory proceeding' means any proceeding (including timely appeals therefrom) commenced by an affected party as—

"(i) a grievance proceeding before an appropriate adjudicative entity,

"(ii) an administrative proceeding before an appropriate governmental agency, or

"(iii) a civil action in a court of competent jurisdiction,

in which the affected party alleges that the termination would violate the contractual or statutory rights of any affected party.

"(D) PENDENCY OF PROCEEDING.—For purposes of this paragraph, a related adjudicatory proceeding shall be treated as pending from the date on which it is commenced until—

"(i) the date of a final determination in the proceeding that the termination would not violate the contractual or statutory rights referred to in subparagraph (C), or

"(ii) the date of a preliminary decision by the presiding arbitrator, governmental agency, or court that, taking into consideration all the facts and circumstances, the affected party is not likely to prevail in such proceeding and the equities clearly favor discontinuing compliance with clauses (i) and (ii) of subparagraph (A).

"(E) EFFECTS OF SUSPENSION OF TERMINATION.—In any case in which a termination is

suspended pursuant to the preceding provisions of this paragraph—

"(i) in the case of a distress termination, and subject to any injunctive relief to the contrary granted by a court in a related adjudicatory proceeding, payment of benefits under the plan may, during the period of time for which the suspension is in effect, be restricted to payment of benefits which are guaranteed by the corporation under section 4022 or to which assets of the plan are required to be allocated under section 4044, except that (unless a court orders otherwise) any benefits not paid solely by reason of such restriction shall be due and payable immediately (together with interest payable by the contributing sponsor) in the event the termination is finally determined to be in violation of the contractual or statutory rights of any affected party, and

"(ii) if, in a related adjudicatory proceeding, the termination is finally determined not to be in violation of the contractual or statutory rights of any affected party, the

termination of the plan shall be effective as of the termination date.".

(b) DEFINITIONS RELATING TO SUFFICIENCY.—Section 4041(d) (29 U.S.C. 1341(d)) is amended to read as follows:

"(d) SUFFICIENCY.—For purposes of this section—

"(1) SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—A single-employer plan is sufficient for benefit entitlements if there is no amount of unfunded benefit entitlements under the plan.

"(2) SUFFICIENCY FOR GUARANTEED BENEFITS.—A single-employer plan is sufficient for guaranteed benefits if there is no amount of unfunded guaranteed benefits under the plan.".

SEC. 8. STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.

Section 4041 (as amended by section 7 of this Act) is further amended by inserting after subsection (a) the following new subsection:

"(b) STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) GENERAL REQUIREMENTS.—A single-employer plan may terminate under a standard termination only if—

"(A) the plan is sufficient for benefit entitlements,

"(B) the plan administrator provides the 90-day advance notice to affected parties required under subsection (a)(2),

"(C) the requirements of subparagraphs (A) and (B) of paragraph (2) are met, and

"(D) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2).

"(2) TERMINATION PROCEDURE.—

"(A) NOTICE TO THE CORPORATION.—As soon as practicable after the termination date proposed in the notice provided pursuant to subsection (a)(2), the plan administrator shall send a notice to the corporation setting forth—

"(i) certification by an enrolled actuary—

"(I) of the amount of the assets of the plan (as of a proposed date of final distribution of assets),

"(II) of the actuarial present value (as of such date) of the benefit entitlements under the plan, and

"(III) that the assets of the plan are sufficient (as of such date) for benefit entitlements,

"(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

"(iii) certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) is accurate and complete.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES OF BENEFIT ENTITLEMENTS.—At the time a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan notifying the person of whether the person has any benefit entitlements under the plan, the actuarial present value thereof (as of the proposed date of final distribution of assets), and a description of the benefit entitlements in such manner as is likely to be understood by the participant or beneficiary and

as may be prescribed in regulations of the corporation.

"(C) NOTICE FROM THE CORPORATION OF NONCOMPLIANCE.—

"(i) IN GENERAL.—Within 60 days after receipt of the notice under subparagraph (A), the corporation shall provide the plan administrator with a notice of noncompliance if—

"(I) it has reason to believe that the requirements of subsection (a)(2) and subparagraphs (A) and (B) have not been met, or

"(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit entitlements.

"(ii) EXTENSION.—The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day

period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

"(D) FINAL DISTRIBUTION OF ASSETS IN ABSENCE OF NOTICE OF NONCOMPLIANCE.—The plan administrator shall commence the final distribution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if the plan administrator has not received during such period a notice of noncompliance from the corporation under subparagraph (C).

"(3) METHODS OF FINAL DISTRIBUTION OF ASSETS.—

"(A) ALTERNATIVE METHODS.—In connection with any final distribution of assets pursuant

to the termination of the plan, the plan administrator shall distribute the assets, in accordance with section 4044, by—

"(i) purchasing irrevocable commitments to provide when due the benefit entitlements of participants and beneficiaries under the plan, or

"(ii) otherwise fully providing when due the benefit entitlements to all participants and beneficiaries under the plan in accordance with the provisions of the plan and any applicable regulations of the corporation.

"(B) CERTIFICATION TO THE CORPORATION OF FINAL DISTRIBUTION OF ASSETS.—Within 30 days after the final distribution of assets is completed pursuant to the termination of the plan, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay when due the benefit entitlements under the plan.

"(4) CONTINUING AUTHORITY.—Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this

subsection, of its authority under section 4003 with respect to matters relating to the termination. Acceptance of a certification under paragraph (3) shall not affect the corporation's obligations under section 4022.".

(b) CONFORMING AMENDMENTS.—Section 4041(f) (29 U.S.C. 1341(f)) is amended—

(1) by inserting after "(f)" the following: "CONVERSION OF A DEFINED BENEFIT PLAN TO A DEFINED CONTRIBUTION PLAN TREATED AS A STANDARD TERMINATION.—";

(2) by striking out "subsection (a)" and inserting in lieu thereof "this section"; and

(3) by inserting "in a standard termination" after "terminated".

SEC. 9. DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.

Section 4041 (as amended by sections 7 and 8 of this Act) is further amended by inserting after subsection (b) the following new subsection:

"(c) DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) IN GENERAL.—A single-employer plan may terminate under a distress termination only if—

"(A) the plan administrator provides the 90-day advance notice to affected parties required under subsection (a)(2),

"(B) the requirements of subparagraph (A) of paragraph (2) are met, and

"(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are satisfied.

"(2) TERMINATION REQUIREMENTS.—

"(A) INFORMATION SUBMITTED TO THE CORPORATION.—As soon as practicable after the termination date proposed in the notice provided pursuant to subsection (a)(2), the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

"(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

"(ii) certification by an enrolled actuary of—

"(I) the amount (as of the proposed termination date) of the current value of the assets of the plan,

"(II) the actuarial present value (as of such date) of the benefit entitlements under the plan,

"(III) whether the plan is sufficient for benefit entitlements as of such date, and

"(IV) whether the plan is sufficient for guaranteed benefits as of such date;

"(iii) in any case in which the plan is not sufficient for benefit entitlements as of such date—

"(I) the name and address of each participant and beneficiary under the plan as of such date, and

"(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the section 4049 trustee to be able to make payments to participants and beneficiaries as required under section 4049; and

"(iv) certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to

the corporation under clauses (i) and (iii) is accurate and complete.

"(B) DETERMINATION BY THE CORPORATION OF NECESSARY DISTRESS CRITERIA.—Upon receipt of the notice of distress termination required under subsection (a)(2) and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), (iii), or (iv).

"(i) RECENT FUNDING WAIVERS.—The requirements of this subparagraph are met if a funding waiver has been granted with respect to the terminating plan with respect to not fewer than three of the five plan years immediately preceding the termination date, and such a waiver has also been granted to each other single-employer plan of which any of the contributing sponsors of the terminating plan or the substantial members of their controlled groups (if any) is a contributing sponsor with respect to at least one of the three plan years immediately preceding the termination date. For purposes of this clause, the term 'funding waiver' means a waiver of

the minimum funding standard under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1954.

"(ii) LIQUIDATION IN BANKRUPTCY OR INSOLVENCY PROCEEDINGS.—The requirements of this subparagraph are met if each of the contributing sponsors and the substantial members of their controlled groups (if any) has filed or has had filed against it as of the termination date a petition seeking liquidation in a case under title 11, United States Code (or under any similar law of a State or political subdivision of a State) which has not, as of the termination date, been dismissed or converted to a case under chapter 11 of such title (or under any similar law of a State or political subdivision of a State) in which reorganization is sought.

"(iii) TERMINATION REQUIRED TO ENABLE PAYMENT OF DEBTS WHILE STAYING IN BUSINESS.—The requirements of this subparagraph are met if a contributing sponsor provides to the corporation substantial evidence that, unless a distress termination occurs, the contributing sponsors and the

substantial members of such sponsors' controlled groups (if any) will each be unable to pay their respective debts when due and will be unable to continue in business.

"(iv) UNREASONABLY BURDENSOME PENSION COSTS CAUSED BY DECLINING WORKFORCE.—

"(I) IN GENERAL.—The requirements of this subparagraph are met if, as determined under regulations of the corporation, solely as a result of a decline in the workforce covered as participants under all single-employer plans maintained by the contributing sponsors of the terminating plan and the members of their controlled groups, the costs of providing pension coverage have become unreasonably burdensome.

"(II) REQUIREMENT MET BY DOUBLING OF COST RATIOS.—The requirements of subclause (I) shall be considered met if and only if the contribution-wage ratio for the plan year in which the termination date occurs is at least twice the contribution-wage ratio for

the applicable preceding plan year, and the contribution-income ratio for the plan year in which the termination date occurs is at least twice the contribution-income ratio for the applicable preceding plan year. The corporation may provide by regulation for application of this clause with respect to the plan year of the terminating plan preceding the year in which the termination date occurs, in lieu of the plan year in which the termination date occurs, in any case in which the corporation determines that such application will enable the corporation to carry out the purposes of this title more equitably and effectively.

"(III) CONTRIBUTION-WAGE RATIO.—For purposes of this clause, the contribution-wage ratio is the ratio of the total required contributions under all single-employer plans of which the persons who are contributing sponsors of the terminating plan or who are members of their controlled groups are contributing sponsors, to the total an-

nualized wages with respect to the active participants under such plans.

"(IV) CONTRIBUTION-INCOME RATIO.—For purposes of this clause, the contribution-income ratio is the ratio of the total required contributions under all single-employer plans of which the persons who are contributing sponsors of the terminating plan or who are members of their controlled groups are contributing sponsors, to the consolidated gross income of such persons.

"(V) APPLICABLE PRECEDING PLAN YEAR.—For purposes of this clause, the applicable preceding plan year is the later of the plan year following the initial effective date of the plan, the first of the five immediately preceding plan years (if the plan has completed five or more plan years), or the plan year following the effective date of the most recent plan amendment (if any) increasing benefits which was adopted and took effect before the termination date.

"(C) SUBSTANTIAL MEMBER.—For purposes of subparagraph (B), the term 'substantial member' of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole. Such term includes any member of the controlled group who does not meet the requirements of the preceding sentence but did meet such requirements—

"(i) for purposes of subparagraph (B)(i), as of the beginning of the earliest applicable plan year referred to therein, or

"(ii) for purposes of subparagraph (B)(ii), as of the date of the filing of the petition referred to therein.

"(D) NOTIFICATION OF DETERMINATIONS BY THE CORPORATION.—The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

"(3) TERMINATION PROCEDURE.—

"(A) DETERMINATIONS BY THE CORPORATION RELATING TO PLAN SUFFICIENCY FOR GUARANTEED BENEFITS AND FOR BENEFIT ENTITLEMENTS.—If the corporation determines that

the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

"(i) determine whether the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

"(ii) determine whether the plan is sufficient for benefit entitlements (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

"(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

"(B) IMPLEMENTATION OF TERMINATION.—After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as provided in clause (i), (ii), or (iii).

"(i) CASES OF SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—In any case in which

the corporation determines that the plan is sufficient for benefits entitlements, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3), and take such other actions as may be appropriate to carry out the termination of the plan.

"(ii) CASES OF SUFFICIENCY FOR GUARANTEED BENEFITS WITHOUT A FINDING OF SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that the plan is not sufficient for benefit entitlements (or that it is unable to determine whether the plan is sufficient for benefit entitlements on the basis of the information made available to it)—

"(I) the plan administrator shall proceed to distribute the plan's assets in the manner prescribed in section 4044,

"(II) the corporation shall appoint a section 4049 trustee as provided in section 4049(a), notify the plan administrator of the identity of the section

4049 trustee, and submit to such trustee copies of the notice of distress termination and other information provided to the corporation pursuant to subsection (a)(2) and clauses (ii), (iii), and (iv) of paragraph (2)(A), and

"(III) the plan administrator shall notify each contributing sponsor and member of such sponsor's controlled group of the identity of the section 4049 trustee and that they may be liable under section 4062 in connection with the termination.

"(iii) CASES WITHOUT ANY FINDING OF SUFFICIENCY.—In any case in which the corporation determines that the plan is not sufficient for guaranteed benefits (or that it is unable to determine whether the plan is sufficient for guaranteed benefits on the basis of the information made available to it)—

"(I) the corporation shall commence proceedings in accordance with section 4042, and

"(II) the corporation and the plan administrator shall take the respective

actions required under subclauses (II) and (III) of clause (ii) relating to the section 4049 trustee, unless the corporation determines that there are no benefit entitlements under the plan which are not benefits guaranteed by the corporation under section 4022.

"(C) FINDING AFTER AUTHORIZED COMMENCEMENT OF TERMINATION THAT PLAN IS UNABLE TO PAY BENEFITS WHEN DUE.—

"(i) FINDING WITH RESPECT TO GUARANTEED BENEFITS ONLY.—If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay when due all benefits under the plan which are guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042.

"(ii) FINDING WITH RESPECT TO BENEFIT ENTITLEMENTS WHICH ARE NOT GUARANTEED BENEFITS.—If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay when due benefit entitlements which are not benefits guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall take the actions set forth in subparagraph (B)(ii)(II) relating to the section 4049 trustee.

"(D) ADMINISTRATION OF THE PLAN DURING INTERIM PERIOD.—During the period commencing on the date the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) and ending on the date the plan administrator receives notification from the corporation of its determination under subparagraph (A), the plan administrator—

"(i) shall refrain from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

"(ii) shall pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

"(iii) shall not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

"(iv) shall continue to pay when due all benefit entitlements under the plan, except that if the plan administrator receives notification from the corporation that the requirements of paragraph (2)(B) are met, and the other requirements for a distress termination are met, the plan administrator may limit the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 4022 or to which assets are required to be allocated under section 4044.

"(4) RESTORATION OF PLAN TERMINATED ON THE BASIS OF BANKRUPTCY OR INSOLVENCY UPON CONVERSION OF LIQUIDATION PROCEEDINGS TO RE-

ORGANIZATION PROCEEDINGS.—In any case in which—

"(A) a single-employer plan has been terminated under a distress termination and the requirements of paragraph (2)(B) in connection with such termination were met solely on the basis of the filing of a petition seeking liquidation in a case under title 11, United States Code (or under a similar law of a State or a political subdivision of a State), as provided in paragraph (2)(B)(ii), and

"(B) during the one-year period following the date of the filing of the petition, such case is dismissed or converted to a case under chapter 11 of such title (or under a similar law of a State or a political subdivision of a State) in which reorganization is sought,

the distress termination shall be void and the plan shall be restored to pretermination status (effective as of the termination date).".

(b) CONFORMING AMENDMENTS.—Section 4041 (as amended by the preceding provisions of this Act) is further amended—

(1) by striking out subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

SEC. 10. TERMINATION PROCEEDINGS; DUTIES OF THE CORPORATION.

(a) MANDATORY COMMENCEMENT OF PROCEEDINGS UPON INABILITY OF SINGLE-EMPLOYER PLAN TO PAY BENEFITS THAT ARE CURRENTLY DUE.—

(1) IN GENERAL.—Section 4042(a) (29 U.S.C. 1342(a)) is amended by striking out in the second sentence "The corporation" and inserting in lieu thereof the following: "The corporation shall as soon as practicable institute court proceedings under this section to terminate a single-employer plan whenever it determines that the plan does not have assets available to pay benefits that are currently due under the terms of the plan. The corporation".

(2) CONFORMING AMENDMENTS.—

(A) Section 4042(b)(1) (29 U.S.C. 1342(b)(1)) is amended, in the first sentence, by inserting "or is required under subsection (a) to institute court proceedings under this section," after "to a plan".

(B) Section 4042(c) (29 U.S.C. 1342(c)) is amended in the first sentence by striking out "If the corporation" and all that follows down through "it may," and inserting in lieu thereof the

following: "If the corporation is required under subsection (a) of this section to commence court proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined (whether or not a trustee has been appointed under subsection (b)) that the plan should be terminated under this section, it shall,".

(b) CLARIFICATION OF AMOUNTS DUE THE CORPORATION.—Section 4042(d)(1)(B)(ii) (29 U.S.C. 1342(d)(1)(B)(ii)) is amended by inserting after "amounts due the plan" the following: ", including but not limited to the collection from the persons obligated to meet the requirements of section 302 of this Act, section 412 of the Internal Revenue Code of 1954, or the terms of the plan".

(c) CONFORMING AMENDMENT.—The heading for section 4042 is amended to read as follows:

"INSTITUTION OF TERMINATION PROCEEDINGS BY THE CORPORATION".

SEC. 11. AMENDMENTS TO LIABILITY PROVISIONS; LIABILITIES RELATING TO BENEFIT ENTITLEMENTS IN EXCESS OF BENEFITS GUARANTEED BY THE CORPORATION.

(a) LIABILITY FOR DISTRESS TERMINATIONS AND TERMINATIONS BY THE CORPORATION.—Section 4062 (29

U.S.C. 1362) is amended by striking out so much as precedes subsection (e) and inserting in lieu thereof the following:

"LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS UNDER A DISTRESS TERMINATION OR A TERMINATION BY THE CORPORATION

"SEC. 4062. (a) IN GENERAL.—In any case in which a single-employer plan is terminated in a distress termination under section 4041(c) or a termination otherwise instituted by the corporation under section 4042, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

"(1) liability to the corporation to the extent provided in subsection (b), and

"(2) liability to the section 4049 trustee to the extent provided in subsection (c).

"(b) LIABILITY TO THE CORPORATION.—

"(1) IN GENERAL.—The liability to the corporation of a person described in subsection (a) shall consist of the sum of—

"(A) the amount of the plan's funding shortage (as defined in subsection (d)(1)), and

"(B) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan,

together with interest calculated from the termination date.

"(2) PAYMENT OF LIABILITY TO THE CORPORATION.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

"(B) PAYMENTS TO CORPORATION UNDER PROFITS SCHEDULE.—Notwithstanding subparagraph (A), if any person subject to liability under this subsection in connection with a plan termination demonstrates to the satisfaction of the corporation that the liability described in paragraph (1)(B) exceeds 30 percent of the collective net worth of persons subject to liability, any person subject to such liability may satisfy the liability described in paragraph (1)(B) in excess of such 30 percent amount by means of payments under the profits schedule as provided in paragraph (3).

"(3) ANNUAL LIABILITY PAYMENTS UNDER PROFITS SCHEDULE.—

"(A) FORM OF PAYMENTS.—Each person making liability payments under the profits schedule shall be liable to the corporation for an annual payment, in cash or securities acceptable to the corporation, for each of the ten liability payment years in connection with the terminated plan (subject to earlier satisfaction of the liability under paragraph (4)(B)).

"(B) AMOUNT OF ANNUAL PAYMENT.—The amount of each annual payment for a liability payment year shall be equal to 10 percent of the sum of the individual pretax profits (if any) of all persons liable under this section in connection with the plan termination for their respective fiscal years ending during such liability payment year.

"(C) DUE DATE.—A person's liability for each annual liability payment referred to in subparagraph (A) for a liability payment year shall accrue as of the end of such year and shall be paid (together with interest accrued from the end of such year) not later than 30 days after the later of—

"(i) the end of such liability payment year, or

"(ii) the latest date on which any person liable for such payment is required to file a Federal income tax return for a fiscal year ending during such liability payment year (taking into account any applicable extensions of time to file such return).

"(4) SATISFACTION OF LIABILITY UNDER PROFITS SCHEDULE.—Notwithstanding paragraph (3)(A)—

"(A) SATISFACTION OF ANNUAL LIABILITY UPON RECEIPT BY CORPORATION OF 10-PERCENT AMOUNT.—The liability to the corporation of all persons who are subject to the profits schedule under this subsection in connection with the same plan termination shall be satisfied with respect to any liability payment year upon receipt by the corporation of one or more liability payments under paragraph (3) for such liability payment year which equal, in the aggregate, the 10-percent amount described in paragraph (3)(A).

"(B) SATISFACTION OF ENTIRE LIABILITY UNDER PROFITS SCHEDULE.—All liability to the corporation under this subsection in connection with the same plan termination with respect to

which payment has commenced under the profits schedule under this subsection may be satisfied with respect to all liability payment years at any time by payment by any person to the corporation of the excess of—

"(i) the total amount of liability to the corporation under this subsection subject to payment under the profits schedule in connection with such termination (plus interest), over

"(ii) the total amount of prior liability payments previously made by all persons to the corporation under the profits schedule under this subsection in connection with the such termination.

"(C) REFUNDS OF EXCESS PAYMENTS.—The corporation shall refund to the payor any amounts paid to the corporation as profits liability payments which are in excess of amounts necessary for satisfaction of liability under subparagraph (A) or (B).

"(5) ALTERNATIVE ARRANGEMENTS.—The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

"(c) Liability to Section 4049 Trustee.—

"(1) In general.—A person described in subsection (a) shall be subject to liability to the section 4049 trustee under this subsection if there is an outstanding amount of benefit entitlements under the plan.

"(2) Annual liability payments.—

"(A) Form of payments.—The liability of any person under this subsection shall consist of an annual payment to the section 4049 trustee, in cash or securities acceptable to the section 4049 trustee, for each of the ten liability payment years in connection with the terminated plan (subject to earlier satisfaction of the liability under paragraph (3)(B)).

"(B) Amount of annual payment.—The amount of each annual payment shall be equal to 5 percent of the sum of the individual pretax profits (if any) of all persons liable under this section in connection with the plan termination for their respective fiscal years ending during such liability payment year.

"(C) Due date.—A person's liability under this subsection for a liability payment year shall accrue as of the end of such year and shall be

paid (with interest accrued from the end of such year) not later than 30 days after the later of—

"(i) the end of such year, or

"(ii) the latest date on which any person subject to liability under this subsection in connection with the same plan termination is required to file a Federal income tax return for a fiscal year ending during such liability payment year (taking into account applicable extensions of time to file such return).

"(3) SATISFACTION OF LIABILITY.—Notwithstanding paragraph (2)(C)—

"(A) SATISFACTION OF ANNUAL LIABILITY UPON RECEIPT BY TERMINATION TRUSTEE OF 5-PERCENT AMOUNT.—The liability to the section 4049 trustee of all persons who are subject to liability under this subsection in connection with the same plan termination shall be satisfied with respect to any liability payment year upon receipt by the section 4049 trustee of one or more liability payments under this subsection for such liability payment year which equal, in the aggregate, the 5 percent amount described in paragraph (2)(B).

"(B) SATISFACTION OF ENTIRE LIABILITY TO SECTION 4049 TRUSTEE.—All liability to the section 4049 trustee of all persons who are subject to liability under this subsection in connection with the same plan termination may be satisfied with respect to all liability payment years at any time by payment by any person to the section 4049 trustee of an amount equal to the excess of—

"(i) the total outstanding amount of benefit entitlements of all participants and beneficiaries under the plan (plus interest), over

"(ii) the total amount of prior liability payments previously made by all persons to the section 4049 trustee under this subsection in connection with such termination.

"(C) REFUNDS OF EXCESS PAYMENTS.—The section 4049 trustee shall refund to the payor any amount paid to the section 4049 trustee as liability payments which is in excess of amounts necessary for satisfaction of liability under subparagraph (A) or (B).

"(d) DEFINITIONS.—For purposes of this section—

"(1) FUNDING SHORTAGE.—The term 'funding shortage', in connection with a terminated plan, means an amount (as of the termination date) equal to the sum of—

"(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1954) of the plan (if any),

"(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 303 of this Act or section 412(d) of such Code (if any), and

"(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304 of this Act or section 412(e) of such Code (if any).

"(2) COLLECTIVE NET WORTH OF PERSONS SUBJECT TO LIABILITY.—

"(A) IN GENERAL.—The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

"(i) have individual net worths which are greater than zero, and

"(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

"(B) DETERMINATION OF NET WORTH.—For purposes of this paragraph, the net worth of a person is—

"(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's operations and prospects at the time chosen for determining the net worth of the person, and

"(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11, United States Code, if the person were a debtor in a case under chapter 7 of such title.

"(C) TIMING OF DETERMINATION.—For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

"(3) PRETAX PROFITS.—The term 'pretax profits' means—

"(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in accordance with generally accepted accounting principles, or

"(B) for any fiscal year of an organization described in section 501(c) of the Internal Revenue Code of 1954, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such

forms as may be necessary to determine the existence and amount of such pretax profits.

"(4) LIABILITY PAYMENT YEARS.—The liability payment years in connection with a terminated plan consist of the ten consecutive one-year periods, the first of which is the earlier of—

"(A) the first of the consecutive one-year periods, following the last plan year preceding the termination date, in which any person liable under this section in connection with the plan termination earns a pretax profit, or

"(B) the fourth of the consecutive one-year periods following the last plan year preceding the termination date.".

(b) CLERICAL AMENDMENT.—Subsection (e) of section 4062 is amended by inserting "TREATMENT OF SUBSTANTIAL CESSATION OF OPERATIONS.—" after "(e)".

(c) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1954.—

(1) DEDUCTIBILITY OF LIABILITY PAYMENTS UNDER ALTERNATIVE ARRANGEMENTS WITH THE PENSION BENEFIT GUARANTY CORPORATION.—Subsection (g) of section 404 of the Internal Revenue Code of 1954 (relating to consideration of certain employer liability payments as contributions) is amended

by adding at the end thereof the following new paragraph:

"(4) TREATMENT OF DISTRESS TERMINATION LIABILITY PAYMENTS UNDER ALTERNATIVE ARRANGEMENTS.—Any payment to the Pension Benefit Guaranty Corporation made pursuant to any arrangement entered into under section 4062(b)(5) of the Employee Retirement Income Security Act of 1974 shall be treated for purposes of this subsection as a contribution to which this section applies, without regard to any limitations otherwise applicable under this section.".

(2) DEDUCTIBILITY OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEES UNDER ERISA.—Subsection (g) of section 404 of such Code (as amended by paragraph (1)) is further amended by adding at the end thereof the following new paragraph:

"(5) TREATMENT OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEES UNDER ERISA.—Any payment of liability under section 4062(c) of the Employee Retirement Income Security Act of 1974 by a person liable under such section shall be treated for purposes of this subsection as a contribution to which this section applies without regard to any limitation otherwise applicable under this section.".

SEC. 12. DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEE.

(a) IN GENERAL.—Subtitle C of title IV is amended by adding at the end thereof the following new section:

"DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEE

"SEC. 4049. (a) APPOINTMENTS OF TRUSTEE; ESTABLISHMENT OF TRUST.—Whenever the corporation is required under section 4041(c)(3)(B)(ii) or (iii) to appoint a section 4049 trustee, it shall appoint either itself or another person to act as the section 4049 trustee. The trustee appointed under this section shall establish a separate trust with respect to the terminated plan. The trust established by the section 4049 trustee shall be used exclusively for—

"(1) receiving liability payments under section 4062(c) from the persons who were (as of the termination date) contributing sponsors of the terminated plan and members of their controlled groups,

"(2) making distributions as provided in this section to the persons who were (as of the termination date) participants and beneficiaries under the terminated plan, and

"(3) defraying the reasonable administrative expenses incurred by the section 4049 trustee in carrying out its responsibilities under this section.

The section 4049 trustee shall establish and maintain such trust for such period of time as is necessary to receive all liability payments required to be made to the trustee under section 4062(c) and to make all distributions required to be made to participants and beneficiaries under this section.

"(b) DISTRIBUTIONS BY TRUSTEE.—

"(1) IN GENERAL.—Not later than 30 days after the end of each liability payment year (described in section 4062(d)(4)) with respect to a terminated single-employer plan, the trustee appointed under this section with respect to such plan shall distribute from the trust maintained by the trustee pursuant to subsection (a) to each person who was (as of the termination date) a participant or beneficiary under the plan—

"(A) in any case not described in subparagraph (B), an amount equal to the outstanding amount of benefit entitlements of such person under the plan (including interest calculated from the termination date), to the extent not previously paid under this paragraph, or

"(B) in any case in which the balance in the trust at the end of such year (after taking into account liability payments received under subsection (a)(1) and administrative expenses paid under subsection (a)(3)) is less than the total of all amounts

described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan, the product derived by multiplying—

"(i) the amount described in subparagraph (A) in connection with each such person, by

"(ii) a fraction—

"(I) the numerator of which is such balance in the trust, and

"(II) the denominator of which is equal to the total of all amounts described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan.

"(2) CARRY-OVER OF MINIMAL PAYMENT AMOUNTS.—The trustee may withhold a payment to any person under this subsection in connection with any liability payment year (other than the last liability payment year with respect to which payments under paragraph (1) are payable) if such payment does not exceed $25. In any case in which such a payment is so withheld, the payment to such person in connection

with the next following liability payment year shall be increased by the amount of such withheld payment.

"(c) REGULATIONS.—The corporation may issue such regulations as it considers necessary to carry out the purposes of this section.".

(b) TAX-EXEMPT STATUS FOR TRUSTS ESTABLISHED UNDER SECTION 4049 OF ERISA.—Section 501(c) of the Internal Revenue Code of 1954 (relating to list of tax-exempt organizations) is amended by adding at the end thereof the following new paragraph:

"(24) A trust established pursuant to section 4049(a) of the Employee Retirement Income Security Act of 1974.".

SEC. 13. TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION.

Subtitle D of title IV is amended by adding at the end thereof the following new section:

"TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION

"SEC. 4069. (a) TREATMENT OF TRANSACTIONS TO EVADE LIABILITY.—If a principal purpose of any transaction is to evade liability under this subtitle—

"(1) this subtitle shall be applied (and liability shall be determined and collected) without regard to such transaction, and

"(2) any person who entered into such transaction with such principal purpose shall be treated as subject to liability under this subtitle in connection with the termination of such plan as if such person were a contributing sponsor of such plan as of the termination date.

"(b) EFFECT OF CORPORATE REORGANIZATION.—For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

"(1) CHANGE OF IDENTITY, FORM, ETC.—If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

"(2) LIQUIDATION INTO PARENT CORPORATION.—If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

"(3) MERGER, CONSOLIDATION, OR DIVISION.—If a person ceases to exist by reason of a merger, consoli-

dation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.".

SEC. 14. ADDITIONAL ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS.

Subtitle D of title IV (as amended by section 13) is further amended by adding at the end thereof the following new section:

"ADDITIONAL ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS

"SEC. 4070. (a) IN GENERAL.—A person who is with respect to a single-employer plan a fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and who is adversely affected by an act or practice of any party in violation of any provision of section 4041, 4042, 4049, 4062, 4063, 4064, or 4069, or an employee organization which represents such a participant or beneficiary for purposes of collective bargaining with respect to such plan, may bring an action—

"(1) to enjoin such act or practice, or

"(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

"(b) STATUS OF PLAN AS PARTY TO ACTION AND WITH RESPECT TO LEGAL PROCESS.—A single-employer plan may be sued under this section as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the corporation shall constitute such service. The corporation, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

"(c) JURISDICTION AND VENUE.—The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the

amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) in any action.

"(d) RIGHT OF CORPORATION TO INTERVENE.—A copy of the complaint in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

"(e) RIGHT OF CORPORATION TO ATTORNEY REPRESENTATION.—In all civil actions under this section, attorneys appointed by the corporation may represent the corporation.

"(f) VENUE OF SUITS AGAINST THE CORPORATION.—Suits under this section to review a final determination or order of the corporation, to restrain the corporation from taking any action contrary to the provisions of sections 4041, 4042, 4062, 4063, 4064, and 4069, or to compel the corporation to take action required under such provisions, may be brought in the district court of the United States for the district where the plan has its principal office or in the United States District Court for the District of Columbia.

"(g) AWARDS OF COSTS AND EXPENSES.—

"(1) GENERAL RULE.—In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including rea-

sonable attorney's fees, to any party who prevails or substantially prevails in such action.

"(2) SPECIAL RULE FOR STANDARD TERMINATION VIOLATIONS.—If, in any action brought under this section the plaintiff alleges a violation of any requirement of section 4041(b) (relating to the termination of a single-employer plan in a standard termination), and, in the judgment of the court, the plaintiff substantially prevails on such allegation, the court shall award to the plaintiff the costs and expenses incurred in connection with such action (including reasonable attorney's fees).

"(3) SPECIAL RULE FOR FAILURE TO MAKE LIABILITY PAYMENT.—In the case of a failure to make timely payment of any liability payment under section 4062(c), the court, in any action for enforcement under this section relating to such failure, shall award to the plaintiff the costs and the expenses incurred in connection with such action (including reasonable attorney's fees), unless the defendant demonstrates that the failure to make the liability payment was based on reasonable cause.

"(4) EXEMPTION FOR PLANS.—Notwithstanding the preceding provisions of this subsection, no plan

shall be required in any action to pay any costs and expenses (including attorney's fees).

"(h) TIME LIMITATION.—An action under this section may not be brought after the later of—

"(1) 6 years after the date on which the cause of action arose, or

"(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.".

SEC. 15. CONFORMING, CLARIFYING, TECHNICAL, AND MISCELLANEOUS AMENDMENTS.

(a) CONFORMING AMENDMENTS RELATING TO PLAN TERMINATIONS.—

(1) CREDITS TO PENSION BENEFIT GUARANTY FUNDS.—Section 4005(b)(1)(C) (29 U.S.C. 1305(b)(1)(C)) is amended by inserting "terminated under section 4041(c) or" after "a plan".

(2) APPLICABILITY OF ASSET ALLOCATION RULES.—Section 4044(c) (29 U.S.C. 1344(c)) is amended in the first sentence by striking out "the period beginning" and all that follows down through

"is to be allocated" and inserting in lieu thereof the following:

"the period beginning—

"(1) in the case of a standard or distress termination under section 4041, on the termination date, or

"(2) in the case of a termination by the corporation under section 4042, on the later of (A) the date a trustee is appointed under section 4042(b), or (B) the termination date,

is to be allocated".

(3) TERMINATION DATE.—Section 4048(a) (29 U.S.C. 1348(a)) is amended—

(A) by striking out "date of termination" and inserting in lieu thereof "termination date";

(B) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(C) in paragraph (2) (as redesignated), by inserting "in a distress termination" after "terminated" and by striking out "section 4041" and inserting in lieu thereof "section 4041(c)";

(D) by inserting before paragraph (2) (as redesignated) the following new paragraph:

"(1) in the case of a plan terminated in a standard termination in accordance with the provisions of sec-

tion 4041(b), the date specified in the notice provided under section 4041(a)(2)";

and

(E) in paragraph (4) (as redesignated), by striking out "in accordance with the provisions of either section" and inserting in lieu thereof "under section 4041(c) or 4042".

(4) Conforming special liability rules with respect to certain single-employer plans under multiple controlled groups.—

(A) Liability of substantial employer for withdrawal.—

(i) Section 4063(a) (29 U.S.C. 1363(a)) is amended—

(I) by striking out "plan under which more than one employer makes contributions (other than a multiemployer plan)" and inserting in lieu thereof "single-employer plan which has two or more contributing sponsors at least two of whom are not under common control";

(II) in paragraph (1), by striking out "withdrawal of a substantial employer" and inserting in lieu thereof

"withdrawal during a plan year of a substantial employer for such plan year";

(III) in paragraph (2), by striking out "of such employer" and all that follows and inserting in lieu thereof "of all persons with respect to the withdrawal of the substantial employer";

(IV) by striking out "whether such employer is liable for any amount under this subtitle with respect to the withdrawal" and inserting in lieu thereof "whether there is liability resulting from the withdrawal of the substantial employer"; and

(V) by striking out "notify such employer" and inserting in lieu thereof "notify the liable persons".

(ii) Section 4063(b) (29 U.S.C. 1363(b)) is amended—

(I) by striking out "an employer" and all that follows down through "shall be liable" and inserting in lieu thereof "any one or more contributing sponsors who withdraw, during a plan

year for which they constitute a substantial employer, from a single-employer plan, to which section 4021 applies and which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a), be liable, together with the members of their controlled groups,";

(II) by striking out "such employer's";

(III) by striking out "the employer's withdrawal" and inserting in lieu thereof "the withdrawal referred to in subsection (a)(1)";

(IV) in paragraph (1), by striking out "such employer" and inserting in lieu thereof "such contributing sponsors";

(V) in paragraph (2), by striking out "all employers" and inserting in lieu thereof "all contributing sponsors"; and

(VI) by striking out "the liability of each such employer" and inserting in lieu thereof "such liability".

(iii) Section 4063(c) (29 U.S.C. 1363(c)) is amended—

(I) in paragraph (1), by striking out "In lieu of payment of his liability under this section the employer" and inserting in lieu thereof "In lieu of payment of a contributing sponsor's liability under this section the contributing sponsor";

(II) in paragraph (2), by inserting "under section 4041(c) or 4042" after "terminated", by striking out "of such employer", and by striking out "to the employer (or his bond cancelled)" and inserting in lieu thereof "(or the bond cancelled)"; and

(III) in paragraph (3), by inserting "under section 4041(c) or 4042" after "terminates".

(iv) Section 4063(d) (29 U.S.C. 1363(d)) is amended—

(I) by striking out "Upon a showing by the plan administrator of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers has resulted" and inserted in lieu thereof "Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted";

(II) by striking out "by employers"; and

(III) in paragraph (1), by striking out "their employer's" and inserting in lieu thereof "the".

(v) Section 4063(e) (29 U.S.C. 1363(e)) is amended—

(I) by striking out "to any employer or plan administrator"; and

(II) by striking out "all other employers" and inserting in lieu thereof "contributing sponsors".

(vi) The heading for section 4063 is amended by adding at the end thereof the

following "FROM SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS.".

(B) ALLOCATION OF LIABILITY ON TERMINATION OF CERTAIN SINGLE-EMPLOYER PLANS.—

(i) Section 4064(a) (29 U.S.C. 1364(a)) is amended—

(I) by striking out "all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)" and inserting in lieu thereof "all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control"; and

(II) by inserting "under section 4041(c) or 4042" after "terminated".

(ii) Section 4064(b) (29 U.S.C. 1364(b)) is amended—

(I) by striking out "liability of each such employer" and inserting in lieu thereof "liability with respect to each contributing sponsor and each member of its controlled group";

(II) by striking out "under section 4062(b)(1)";

(III) by striking "each employer" the first place it appears and inserting in lieu thereof "each contributing sponsor and member of its controlled group";

(IV) in paragraph (1), by striking out "each employer" and inserting in lieu thereof "members of such controlled group";

(V) in paragraph (2), by striking out "such employers" and inserting in lieu thereof "contributing sponsors";

(VI) by striking out "5 years," in paragraph (2) and all that follows down through "employer." and inserting in lieu thereof "5 years."; and

(VII) in the last sentence, by striking out "of each such employer" and inserting in lieu thereof "of each such contributing sponsor and member of its controlled group".

(iii) The heading for section 4064 is amended to read as follows:

"LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS".

(C) ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS.—Section 4066 (29 U.S.C. 1366) is amended—

(i) by striking out "each plan under which contributions are made by more than one employer (other than a multiemployer plan)" and inserting in lieu thereof "each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control";

(ii) by striking out "any employer making contributions under that plan" and inserting in lieu thereof "any contributing sponsor of the plan"; and

(iii) by striking out "that he is a substantial employer" and inserting in lieu thereof "that such contributing sponsor comprises with others a substantial employer".

(5) ADDITIONAL AMENDMENTS RELATING TO RECOVERY OF AMOUNTS OF LIABILITY.—

(A) Section 4067 (29 U.S.C. 1367) is amended—

(i) by striking out "employers" and inserting in lieu thereof "contributing sponsors and members of their controlled groups"; and

(ii) by inserting "of amounts of liability to the corporation accruing as of the termination date" after "deferred payment".

(B)(i) Section 4068 (29 U.S.C. 1368) is amended—

(I) in subsection (a), by striking out "employers" the first place it appears and inserting in lieu thereof "person", by striking out "neglect or refuse" and inserting in lieu thereof "neglects or refuses", and by striking out "employer or employers" and inserting in lieu thereof "person";

(II) in subsection (d)(1), by striking out "employer" and inserting in lieu thereof "liable person";

(III) in subsection (d)(2), by striking out "employer" each place it appears and inserting in lieu thereof "liable person"; and

(IV) in subsection (e), by striking out "employer or employers" and inserting in lieu thereof "liable person".

(ii) Section 4068 is further amended by striking out subsection (c)(1) (29 U.S.C. 1368(c)(1)) and inserting in lieu thereof the following:

"(c)(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954 with respect to liens thereunder. Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

"(A) 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

"(B) 'the corporation' for 'the Secretary' in subsections (a) and (b)(9)(C);

"(C) 'the payment of the amount on which the lien is based' for 'the collection of any tax under this title' in subsection (b)(3);

"(D) 'a person whose property is subject to the lien' for 'the taxpayer' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

"(E) 'such person' for 'the taxpayer' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

"(F) 'payment of the loan value of the amount on which the lien is based is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)' in subsection (b)(9)(C);

"(G) 'section 4068 lien' for 'tax lien' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

"(H) 'the date on which the lien is first filed' for 'the date of the assessment of the tax' in subsection (g)(3)(A).".

(b) CLARIFICATION OF DESCRIPTION OF CERTAIN INFORMATION REQUIRED TO BE FILED IN ANNUAL REPORT.—

(1) IN GENERAL.—Section 103(d)(6) (29 U.S.C. 1023(d)(6)) is amended to read as follows:

"(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

"(A) the current value of the assets of the plan,

"(B) the present value of all nonforfeitable benefits for participants and beneficiaries receiving payments under the plan,

"(C) the present value of all nonforfeitable benefits for all other participants and beneficiaries,

"(D) the present value of all accrued benefits which are not nonforfeitable (including a separate accounting of such benefits which are benefit entitlements, as defined in section 4001(a)(16)), and

"(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).".

(2) CONFORMING AMENDMENT.—Section 104(a)(2)(A) (29 U.S.C. 1024(a)(2)(A)) is amended by striking out the second sentence.

(3) TRANSITION RULES.—Any regulations, modifications, or waivers which have been issued by the Secretary of Labor with respect to section 103(d)(6) of the Employee Retirement Income Security Act of 1974 (as in effect immediately before the date of the enactment of this Act) shall remain in full force and effect until modified by any regulations with respect to such section 103(d)(6) prescribed by the Pension Benefit Guaranty Corporation.

(c) ADDITIONAL AMENDMENTS.—

(1) DEFINITIONS FOR TITLE I.—Section 3 (29 U.S.C. 1002) is amended—

(A) in paragraph (37)(A), by inserting "pension" before "plan"; and

(B) by adding after paragraph (40) the following new paragraph:

"(41) The term 'single-employer plan' means any pension plan which is not a multiemployer plan.".

(2) NOTICE OF REQUEST FOR WAIVERS OF MINIMUM FUNDING STANDARDS AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section 303 (29 U.S.C. 1083) is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection:

"(d)(1) Before granting a waiver under this section, the Secretary shall require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who would qualify as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of the Internal Revenue Code of 1954 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of an application for a determination under section 3001(a) and each employee organization representing such an employee.

"(2) After granting a waiver under this section, the Secretary may modify the terms and conditions under which the waiver was granted if the Secretary determines that this is appropriate taking into account all the facts and circumstances.

"(3) The Secretary shall consider any relevant information submitted by a recipient of the notification described in paragraph (1) relating to the propriety of granting the waiver or of subsequently modifying the terms and conditions thereof.".

(3) NOTICE OF REQUEST FOR EXTENSIONS OF AMORTIZATION PERIOD AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section 304 (as amended by section 112(b)(2) of this Act) (29 U.S.C. 1084) is further amended by adding at the end thereof the following new subsection:

"(d)(1) Before granting an extension under this section, the Secretary shall require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who would qualify as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of the Internal Revenue Code of 1954 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of an application for a determina-

tion under section 3001(a) and each employee organization representing such an employee.

"(2) After granting an extension under this section, the Secretary may modify the terms and conditions under which the extension was granted if the Secretary determines that this is appropriate taking into account all the facts and circumstances.

"(3) The Secretary shall consider any relevant information submitted by a recipient of the notification described in paragraph (1) relating to the propriety of granting the extension or of subsequently modifying the terms and conditions thereof.".

(4) INTERNAL REVENUE CODE AMENDMENTS RELATING TO WAIVERS AND EXTENSIONS.—Subsection (f) of section 412 of the Internal Revenue Code of 1954 (relating to requirement that benefits may not be increased during waiver or extension period) is amended—

(A) by striking out "BENEFITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—" and inserting in lieu thereof "REQUIREMENTS RELATING TO WAIVERS AND EXTENSIONS.—";

(B) in paragraph (1), by striking out "IN GENERAL" and inserting in lieu thereof "BENE-

FITS MAY NOT BE INCREASED DURING WAIVER OR EXTENSION PERIOD.—"; and

(C) by adding at the end thereof the following new paragraph:

"(3) ADDITIONAL REQUIREMENTS.—

"(A) ADVANCE NOTICE.—Before granting a waiver under subsection (d) or an extension under subsection (e), the Secretary shall require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who would qualify as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of the Internal Revenue Code of 1954 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of an application for a determination under section 3001(a) of the Employee Retirement Income Security Act of 1974 and each employee organization representing such an employee.

"(B) SUBSEQUENT MODIFICATIONS OF TERMS AND CONDITIONS.—After granting a waiver under subsection (d) or an extension under subsection (e), the Secretary may modify the terms and conditions under which the waiver or

extension was granted if the Secretary determines that this is appropriate taking into account all the facts and circumstances.

"(C) CONSIDERATION OF RELEVANT INFORMATION.—The Secretary shall consider any relevant information submitted by a recipient of the notification described in subparagraph (A) relating to the propriety of granting the waiver or extension or of subsequently modifying the terms and conditions thereof.".

(5) TECHNICAL CORRECTION.—Section 4003(f) (29 U.S.C. 1303(f)) is amended, in the first sentence, by striking out "employee" and inserting in lieu thereof "employer".

(6) REPEAL OF EXPIRED AUTHORITY.—Section 4004 (29 U.S.C. 1304) is repealed.

(7) VOTING BY CORPORATION OF STOCK PAID AS LIABILITY.—Section 4005 (29 U.S.C. 1305) is amended by adding at the end thereof the following new subsection:

"(g) Any stock in a person liable to the corporation under this title which is paid to the corporation by such person or a member of such person's controlled group in satisfaction of such person's liability under this title may be

voted only by the custodial trustees or outside money managers of the corporation.".

(8) TREATMENT OF PLAN.—Section 4021(b) (29 U.S.C. 1321(b)) is amended—

(A) in paragraph (12), by striking out "or" at the end thereof;

(B) in paragraph (13), by striking out "plan." and inserting in lieu thereof "plan; or"; and

(C) by adding after paragraph (13) the following new paragraph:

"(14) which is established and maintained by a corporation established by Act of Congress to act in matters of relief under the Treaty of Geneva of August 22, 1864.".

(9) EFFECTIVE YEARS.—Section 4022(b)(7) (29 U.S.C. 1322(b)(7)) is amended by striking out "following" and inserting in lieu thereof "beginning with".

(10) CONFORMING AMENDMENT.—Section 4042(d)(3) (29 U.S.C. 1342(d)(3)) is amended by striking out "same duties as a trustee appointed under section 47 of the Bankruptcy Act" and inserting in lieu thereof "same duties as those of a trustee under section 704 of title 11, United States Code".

(11) CLERICAL CORRECTIONS.—Section 4044(a)(4) (29 U.S.C. 1344(a)(4)(A)) is amended—

(A) in subparagraph (A), by striking out "section 4022(b)(5)" and inserting in lieu thereof "section 4022B(a)"; and

(B) in subparagraph (B), by striking out "section 4022(b)(6)" and inserting in lieu thereof "section 4022(b)(5)".

(12) TREATMENT OF LIEN.—Section 4068(c)(2) (29 U.S.C. 1368(c)(2)) is amended to read as follows:

"(2) In any case under title 11, United States Code, any lien imposed under subsection (a) and perfected within the meaning of section 545(2) of such title shall be treated as securing an allowed claim under section 506 of such title, subject only to the limitations imposed by section 6323 of the Internal Revenue Code of 1954. Any claim for the unpaid amount of liability under section 4062, 4063, or 4064 for which a lien has not been perfected shall be treated in the same manner as a claim for a tax on income having priority under section 507(a)(6) of such title. In the case of any insolvency proceeding (other than a case under such title 11), any lien imposed under subsection (a) shall be treated, for purposes of section 3713 of title 31, United States Code, in the same manner as a lien securing a debt due and owing to the United States to which such section applies.".

(13) RELEASE OF LIEN.—Section 4068(e) (29 U.S.C. 1368(e)) is amended by striking out ", with the consent of the board of directors,".

(d) AMENDMENTS TO THE TABLE OF CONTENTS OF ERISA.—The table of contents in section 1 is amended—

(1) by striking out the item relating to section 4004;

(2) by striking out the item relating to section 4042 and inserting in lieu thereof the following new item:

"Sec. 4042. Institution of termination proceedings by the corporation.";

(3) by inserting after the item relating to section 4048 the following new item:

"Sec. 4049. Distribution to participants and beneficiaries of liability payments to section 4049 trustee."; and

(4) by striking out the items relating to subtitle D of title IV and inserting in lieu thereof the following new items:

"Subtitle D—Obligations of the Corporation; Liability of Employers and Other Persons

"Sec. 4061. Amounts payable by the corporation.
"Sec. 4062. Liability for termination of single-employer plans under a distress termination or a termination by the corporation.
"Sec. 4063. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups.
"Sec. 4064. Liability on termination of single-employer plans under multiple controlled groups.
"Sec. 4065. Annual report of plan administrator.
"Sec. 4066. Annual notification of substantial employers.
"Sec. 4067. Recovery of employer liability for plan termination.
"Sec. 4068. Lien for liability of employer.
"Sec. 4069. Treatment of transactions to evade liability; effect of corporate reorganization.
"Sec. 4070. Additional enforcement authority relating to terminations of single-employer plans.".

54-587 O - 86 - 4

SEC. 16. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

99TH CONGRESS
1ST SESSION

H. R. 2812

To amend the Employee Retirement Income Security Act of 1974 to provide for an increase in the premium rates payable to the Pension Benefit Guaranty Corporation and to revise the procedures for establishing such premium rates.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1985

Mr. CLAY (for himself and Mrs. ROUKEMA) introduced the following bill; which was referred jointly to the Committees on Education and Labor and Ways and Means

---

A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide for an increase in the premium rates payable to the Pension Benefit Guaranty Corporation and to revise the procedures for establishing such premium rates.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Single-Employee Pension Plan Termination Insurance Premium Act of 1985".

SEC. 2. PREMIUM INCREASE.

(a) GENERAL RULE.—Section 4006(a)(3)(A)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended by striking out, "for plan years beginning after December 31, 1977, an amount equal to $2.60" and inserting in lieu thereof "for plan years beginning after December 31, 1985, an amount equal to $8.50".

(b) CONFORMING AMENDMENT WITH RESPECT TO PLAN YEARS AFTER 1977.—Section 4006(c)(1) of such Act (29 U.S.C. 1306(c)(1)) is amended by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) in the case of each plan which was not a multiemployer plan in a plan year—

"(i) with respect to each plan year beginning before January 1, 1978, an amount equal to $1 for each individual who was a participant in such plan during the plan year, and

"(ii) with respect to each plan year beginning after December 31, 1977, an amount equal to $2.60 for each individual who was a participant in such plan during the plan year, and".

SEC. 3. INCORPORATION OF CERTAIN FORMER PROVISIONS IN LIEU OF CROSS REFERENCE THERETO.

Section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)) is amended—

(1) in paragraph (1), by striking out the last sentence; and

(2) by adding at the end thereof the following new paragraphs:

"(6) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 4022 with respect to single-employer plans, the corporation shall establish such rates and bases in coverage schedules in accordance with the provisions of paragraph (7).

"(7)(A) The corporation may establish annual premiums composed of—

"(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for single-employer plans and not in excess of 0.025 percent for multiemployer plans, and

"(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for single-employer plans and for multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for single-employer plans and for multi-

employer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

"(B) The corporation may establish annual premiums based on—

"(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

"(ii) unfunded basic benefits guaranteed under this title, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

"(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses two or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

"(8) The corporation shall by regulation define the terms 'value of the assets' and 'present value of the benefits of the plan which are guaranteed' in a manner consistent with the purposes of this title and the provisions of this section.".

SEC. 4. APPROVAL BY JOINT RESOLUTION OF RECOMMENDATIONS OF THE PENSION BENEFIT GUARANTY CORPORATION.

Title IV of the Employee Retirement Income Security Act of 1974 is amended as follows:

(1) The last sentence of subsection (a)(2) of section 4006 (29 U.S.C. 1306(a)(2)), is amended by striking out "the Congress approves such revised schedule by a concurrent resolution" and inserting in lieu thereof "a joint resolution approving such revised schedule is enacted".

(2) Subsection (a)(4) of section 4006 (29 U.S.C. 1306(a)(4)) is amended by striking out "approval by the Congress" and inserting in lieu thereof "the enactment of a joint resolution".

(3) Subsection (b)(3) of section 4006 (29 U.S.C. 1306(b)(3)) is amended by striking out "concurrent" and substituting in lieu thereof "joint", and deleting "That the Congress favors the" and inserting in lieu thereof "The", and inserting "is hereby approved" before the period preceding the quotation marks.

(4) Subsection (f)(2)(B) of section 4022A (29 U.S.C. 1322a(f)(2)(B)) is amended by striking out "Congress by concurrent resolution" and inserting in lieu thereof "the enactment of a joint resolution".

(5) Subsection (f)(2)(C) of section 4022A (29 U.S.C. 1322a(f)(2)(C)) is amended by striking out "approved" and inserting in lieu thereof "so enacted".

(6) Subsection (f)(3)(B) of section 4022A (29 U.S.C. 1322a(f)(3)(A)) is amended by striking out "Congress by a concurrent resolution" and inserting in lieu thereof "enactment of a joint resolution".

(7) Subsection (f)(4)(A) of section 4022A (29 U.S.C. 1322a(f)(4)(A)) is amended by striking out "concurrent" and inserting in lieu thereof "joint".

(8) Subsection (f)(4)(B) of section 4022A (29 U.S.C. 1322a(f)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in lieu thereof "joint", by striking out "That the Congress favors the" and inserting in lieu thereof "The", and by inserting "is hereby approved" immediately before the period preceding the quotation marks.

(9) Subsection (g)(4)(A)(ii) of section 4022A (29 U.S.C. 1322a(g)(4)(A)(ii)) is amended by striking out "concurrent" and inserting in lieu thereof "joint", and by striking out "adopted" and inserting in lieu thereof "enacted".

(10) Subsection (g)(4)(B) of section 4022A (29 U.S.C. 1322a(g)(4)(B)) is amended by striking out "concurrent" each place it appears and inserting in

lieu thereof "joint", by striking out "That the Congress disapproves the" and inserting in lieu thereof "The", and by inserting "is hereby disapproved" immediately before the period preceding the quotation marks.

SEC. 5. EFFECTIVE DATES.

(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by the preceding provisions of this Act shall be effective for plan years commencing after December 31, 1985.

(b) SPECIAL RULE.—The amendments made by section 3 shall be effective as of the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980.

99TH CONGRESS
1ST SESSION

H. R. 2813

To amend the Employee Retirement Income Security Act of 1974 to improve the single-employer pension plan termination insurance program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 20, 1985

Mr. CLAY (for himself and Mrs. ROUKEMA) introduced the following bill; which was referred to the Committee on Education and Labor

---

A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve the single-employer pension plan termination insurance program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as "Single-Employer Pension Plan Amendments Act of 1985".

TABLE OF CONTENTS

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) ADDITIONAL FINDINGS.—The Congress further finds that modification of the current termination insurance system—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans; and

(2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship, and to keep the premium costs of such system at a reasonable level.

(c) DECLARATION OF POLICY.—It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans,

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits, and

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship, and to keep the premium costs of such system at a reasonable level.

SEC. 3. AMENDMENT OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Employee

Retirement Income Security Act of 1974, unless otherwise specified.

SEC. 4. DEFINITIONS.

(a) IN GENERAL.—Section 4001(a) (29 U.S.C. 1301(a)) is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following new paragraph:

"(2) 'substantial employer', for any plan year of a single-employer plan, means one or more persons—

"(A) who are contributing sponsors of the plan in such plan year,

"(B) who, at any time during such plan year, are members of the same affiliated group (within the meaning of subsection (a) of section 1563 of the Internal Revenue Code of 1954, determined without regard to subsections (a)(4) and (e)(3)(C) of such section), and

"(C) whose required contributions to the plan for each plan year constituting one of—

"(i) the two immediately preceding plan years, or

"(ii) the first two of the three immediately preceding plan years,

total an amount greater than or equal to 10 percent of all contributions required to be paid to or under that plan for such plan year;";

(2) in paragraph (11), by striking out "and";

(3) in paragraph (12), by striking out "corporation." and inserting in lieu thereof "corporation;" and

(4) by adding after paragraph (12) the following new paragraphs:

"(13) 'contributing sponsor', of a single-employer plan, means a person—

"(A) who is responsible for meeting the funding requirements under section 302 of this Act or section 412 of the Internal Revenue Code of 1954, or

"(B) who is a member of the controlled group of a person described in subparagraph (A) and has employed a significant number of participants under such plan (in accordance with any regulations which may be prescribed by the corporation);

"(14) in the case of a single-employer plan—

"(A) 'controlled group' means, in connection with any person, a group consisting of such person and all other persons under common control with such person; and

"(B) the determination of whether two or more persons are under 'common control' shall be based on the principles which apply under subsection (b)(1) in determining whether employees of two or more trades or businesses (whether or not incorporated) are to be treated as employed by a single employer;

"(15) 'single-employer plan' means, except as otherwise specifically provided in this title, any plan which is not a multiemployer plan;

"(16) 'benefit entitlements', of a participant or beneficiary as of any date under a single-employer plan, means all benefits provided by the plan with respect to the participant or beneficiary, other than any health benefits which are not guaranteed by the corporation under section 4022 (determined without regard to section 4022(b)(7)), for which the participant or beneficiary has satisfied, as of such date, all of the conditions required of him or her under the provisions of the plan to establish entitlement to the benefits, except for the submission of a formal application, retirement, completion of required waiting period, death, or designation of a beneficiary;

"(17) 'amount of unfunded guaranteed benefits', of a participant or beneficiary as of any date under a

single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of the participant or beneficiary under the plan which are guaranteed under section 4022, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to those benefits under section 4044;

"(18) 'amount of unfunded benefit entitlements', of a participant or beneficiary as of any date under a single-employer plan, means an amount equal to the excess of—

"(A) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit entitlements of the participant or beneficiary under the plan, over

"(B) the current value as of such date of the assets of the plan which are required to be allocated to such benefit entitlements under section 4044;

"(19) 'outstanding amount of benefit entitlements', of a participant or beneficiary under a terminated single-employer plan, means the excess of—

"(A) the actuarial present value (determined as of the termination date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefit entitlements of such participant or beneficiary under the plan, over

"(B) the actuarial present value (determined as of such date on the basis of assumptions prescribed by the corporation for purposes of section 4044) of the benefits of such participant or beneficiary which are guaranteed under section 4022 or to which assets of the plan are allocated under section 4044;

"(20) 'person' has the meaning set forth in section 3(9);

"(21) 'affected party' means, with respect to a plan—

"(A) each participant in the plan,

"(B) each beneficiary under the plan,

"(C) each employee organization representing participants or beneficiaries in the plan, and

"(D) the corporation,

except that, in connection with any notice required to be provided to the affected party, if an affected party has designated, in writing, a person to receive such notice on behalf of the affected party, any reference to the affected party shall be construed to refer to such person; and

"(22) 'section 4049 trustee', in connection with a terminated single-employer plan, means the trustee appointed under section 4049(a) in connection with the plan.".

(b) TECHNICAL CORRECTION OF ERROR IN MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980.—Section 4001 is further amended by striking out the amendments made by section 402(a)(1)(F) of the Multiemployer Pension Plan Amendments Act of 1980 (94 Stat. 1297) (adding new paragraphs after a subsection (c)(1)), and, in lieu thereof, in subsection (b), by inserting "(1)" after "(b)" and by adding at the end of such subsection the following new paragraphs:

"(2) For purposes of this title, except as otherwise provided in this title, contributions or other payments shall be considered made under a plan for a plan year if they are made within the period prescribed under section 412(c)(10) of the Internal Revenue Code of 1954 (determined, in the case

of a terminated plan, as if the plan had continued beyond the termination date).

"(3) For purposes of subtitle E, 'Secretary of the Treasury' means the Secretary of the Treasury or such Secretary's delegate.".

SEC. 5. CLARIFICATION OF AUTHORITY TO FREEZE PLANS.

(a) IN GENERAL.—Section 4001 (29 U.S.C. 1301) (as amended by section 4) is further amended by adding at the end thereof the following new subsection:

"(c)(1) For purposes of this title, the term 'terminate', when used in connection with a single-employer plan, means to terminate in accordance with section 4041 or 4042.

"(2) The adoption and operation of a provision of a single-employer plan amendment is not a termination for purposes of this title if the sole effect of the provision is to provide that some or all service performed on or after a specified date (which is or follows the effective date of the amendment) will not be taken into account under the plan solely for purposes of determining (in accordance with section 204 of this Act or section 411(b) of the Internal Revenue Code of 1954) benefits accrued on or after such specified date.".

(b) NOTICE REQUIREMENTS.—Section 204 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"(h) A plan may not be amended on or after the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985 so as to provide that some or all service performed on or after a specified date (which is or follows the effective date of the amendment) will not be taken into account under the plan for purposes of determining (in accordance with this section) benefits accrued on or after such specified date, unless, after adoption of the plan amendment and not less than 60 days before the effective date of the plan amendment, the plan administrator provides to each affected party (as defined in section 4001(a)(20)) a written notice setting forth the plan amendment and its effective date.".

SEC. 6. GENERAL REQUIREMENTS RELATING TO TERMINATION OF SINGLE-EMPLOYER PLANS BY PLAN ADMINISTRATORS.

(a) In General.—Section 4041 (29 U.S.C. 1341) is amended by striking out subsections (a) through (c) and inserting in lieu thereof the following:

"Sec. 4041. (a) General Rules Governing Single-Employer Plan Terminations.—

"(1) Exclusive means of plan termination.—Except in the case of a termination for which proceedings are otherwise instituted by the corporation

as provided in section 4042, a single-employer plan may be terminated only in a standard termination under subsection (b) or a distress termination under subsection (c).

"(2) 90-DAY NOTICE TO AFFECTED PARTIES.—Not less than 90 days before the proposed termination date of a plan termination under subsection (b) or (c), the plan administrator shall provide to each affected party a written notice stating that such termination is intended and the proposed termination date. The written notice shall include any related additional information required in regulations of the corporation.

"(3) PROCEDURE IN THE EVENT OF RELATED ADJUDICATORY PROCEEDINGS.—

"(A) PROCEDURE IN THE CASE OF STANDARD TERMINATION.—In any case in which, during the period beginning on the date on which the plan administrator provides the notice required under paragraph (2) and ending on the proposed termination date specified in such notice, the plan administrator receives written notice from an affected party that there is pending a related adjudicatory proceeding with respect to the proposed standard termination of the plan under subsection (b), the plan administrator—

"(i) shall suspend the termination, by refraining from further processing or implementing the termination during the pendency of such proceeding, or

"(ii) may proceed with the termination, except that, in so proceeding, the plan administrator shall take such actions (including, but not limited to, providing for segregation of plan assets or maintenance of plan records) as are necessary and appropriate to assure that the plan may be effectively restored if the plan is finally determined in any such proceeding to have been terminated in violation of the contractual or statutory rights of any affected party and is ordered in such proceeding to be restored.

During any period of time for which the plan administrator suspends the termination pursuant to clause (i), any applicable time limitation in the termination procedure shall cease to run.

"(B) PROCEDURE IN THE CASE OF DISTRESS TERMINATION.—In the case of a related adjudicatory proceeding with respect to a proposed distress termination of the plan under subsection (c), subparagraph (A) shall apply with re-

spect to such termination and proceeding in the same manner and to the same extent as it applies in the case of a standard termination, except that any reference in subparagraph (A) to the plan administrator shall be considered a reference to the plan administrator and to the corporation or other person serving as trustee under section 4042.

"(C) RELATED ADJUDICATORY PROCEEDING.—For purposes of this paragraph, the term 'related adjudicatory proceeding' means any proceeding (including timely appeals therefrom) commenced by an affected party as—

"(i) a grievance proceeding before an appropriate adjudicative entity,

"(ii) an administrative proceeding before an appropriate governmental agency, or

"(iii) a civil action in a court of competent jurisdiction,

in which the affected party alleges that the termination would violate the contractual or statutory rights of any affected party.

"(D) PENDENCY OF PROCEEDING.—For purposes of this paragraph, a related adjudicatory proceeding shall be treated as pending from the date on which it is commenced until—

"(i) the date of a final determination in the proceeding that the termination would not violate the contractual or statutory rights referred to in subparagraph (C), or

"(ii) the date of a preliminary decision by the presiding arbitrator, governmental agency, or court that, taking into consideration all the facts and circumstances, the affected party is not likely to prevail in such proceeding and the equities clearly favor discontinuing compliance with clauses (i) and (ii) of subparagraph (A).

"(E) EFFECTS OF SUSPENSION OF TERMINATION.—In any case in which a termination is suspended pursuant to the preceding provisions of this paragraph—

"(i) in the case of a distress termination, and subject to any injunctive relief to the contrary granted by a court in a related adjudicatory proceeding, payment of benefits under the plan may, during the period of time for which the suspension is in effect, be restricted to payment of benefits which are guaranteed by the corporation under section 4022 or to which assets of the plan are re-

quired to be allocated under section 4044, except that (unless a court orders otherwise) any benefits not paid solely by reason of such restriction shall be due and payable immediately (together with interest payable by the contributing sponsor) in the event the termination is finally determined to be in violation of the contractual or statutory rights of any affected party, and

"(ii) if, in a related adjudicatory proceeding, the termination is finally determined not to be in violation of the contractual or statutory rights of any affected party, the termination of the plan shall be effective as of the termination date.".

(b) DEFINITIONS RELATING TO SUFFICIENCY.—Section 4041(d) (29 U.S.C. 1341(d)) is amended to read as follows:

"(d) SUFFICIENCY.—For purposes of this section—

"(1) SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—A single-employer plan is sufficient for benefit entitlements if there is no amount of unfunded benefit entitlements under the plan.

"(2) SUFFICIENCY FOR GUARANTEED BENEFITS.—A single-employer plan is sufficient for guaran-

teed benefits if there is no amount of unfunded guaranteed benefits under the plan.".

SEC. 7. STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.

Section 4041 (as amended by section 6 of this Act) is further amended by inserting after subsection (a) the following new subsection:

"(b) STANDARD TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) GENERAL REQUIREMENTS.—A single-employer plan may terminate under a standard termination only if—

"(A) the plan is sufficient for benefit entitlements,

"(B) the plan administrator provides the 90-day advance notice to affected parties required under subsection (a)(2),

"(C) the requirements of subparagraphs (A) and (B) of paragraph (2) are met, and

"(D) the corporation does not issue a notice of noncompliance under subparagraph (C) of paragraph (2).

"(2) TERMINATION PROCEDURE.—

"(A) NOTICE TO THE CORPORATION.—As soon as practicable after the termination date pro-

posed in the notice provided pursuant to subsection (a)(2), the plan administrator shall send a notice to the corporation setting forth—

"(i) certification by an enrolled actuary—

"(I) of the amount of the assets of the plan (as of a proposed date of final distribution of assets),

"(II) of the actuarial present value (as of such date) of the benefit entitlements under the plan, and

"(III) that the assets of the plan are sufficient (as of such date) for benefit entitlements,

"(ii) such information as the corporation may prescribe in regulations as necessary to enable the corporation to make determinations under subparagraph (C), and

"(iii) certification by the plan administrator that the information on which the enrolled actuary based the certification under clause (i) and the information provided to the corporation under clause (ii) is accurate and complete.

"(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES OF BENEFIT ENTITLEMENTS.—At the time a notice is sent by the plan administrator under subparagraph (A), the plan administrator shall send a notice to each person who is a participant or beneficiary under the plan notifying the person of whether the person has any benefit entitlements under the plan, the actuarial present value thereof (as of the proposed date of final distribution of assets), and a description of the benefit entitlements in such manner as is likely to be understood by the participant or beneficiary and as may be prescribed in regulations of the corporation.

"(C) NOTICE FROM THE CORPORATION OF NONCOMPLIANCE.—

"(i) IN GENERAL.—Within 60 days after receipt of the notice under subparagraph (A), the corporation shall provide the plan administrator with a notice of noncompliance if—

"(I) it has reason to believe that the requirements of subsection (a)(2) and subparagraphs (A) and (B) have not been met, or

"(II) it otherwise determines, on the basis of information provided by affected parties or otherwise obtained by the corporation, that there is reason to believe that the plan is not sufficient for benefit entitlements.

"(ii) Extension.—The corporation and the plan administrator may agree to extend the 60-day period referred to in clause (i) by a written agreement signed by the corporation and the plan administrator before the expiration of the 60-day period. The 60-day period shall be extended as provided in the agreement and may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 60-day period. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator.

"(D) Final distribution of assets in absence of notice of noncompliance.—The plan administrator shall commence the final distri-

bution of assets pursuant to the standard termination of the plan as soon as practicable after the expiration of the 60-day (or extended) period referred to in subparagraph (C), but such final distribution may occur only if the plan administrator has not received during such period a notice of noncompliance from the corporation under subparagraph (C).

"(3) METHODS OF FINAL DISTRIBUTION OF ASSETS.—

"(A) ALTERNATIVE METHODS.—In connection with any final distribution of assets pursuant to the termination of the plan, the plan administrator shall distribute the assets, in accordance with section 4044, by—

"(i) purchasing irrevocable commitments to provide when due the benefit entitlements of participants and beneficiaries under the plan, or

"(ii) otherwise fully providing when due the benefit entitlements to all participants and beneficiaries under the plan in accordance with the provisions of the plan and any applicable regulations of the corporation.

"(B) CERTIFICATION TO THE CORPORATION OF FINAL DISTRIBUTION OF ASSETS.—Within 30 days after the final distribution of assets is completed pursuant to the termination of the plan, the plan administrator shall send a notice to the corporation certifying that the assets of the plan have been distributed in accordance with the provisions of subparagraph (A) so as to pay when due the benefit entitlements under the plan.

"(4) CONTINUING AUTHORITY.—Nothing in this section shall be construed to preclude the continued exercise by the corporation, after the termination date of a plan terminated in a standard termination under this subsection, of its authority under section 4003 with respect to matters relating to the termination. Acceptance of a certification under paragraph (3) shall not affect the corporation's obligations under section 4022.".

(b) CONFORMING AMENDMENTS.—Section 4041(f) (29 U.S.C. 1341(f)) is amended—

(1) by inserting after "(f)" the following: "CONVERSION OF A DEFINED BENEFIT PLAN TO A DEFINED CONTRIBUTION PLAN TREATED AS A STANDARD TERMINATION.—";

(2) by striking out "subsection (a)" and inserting in lieu thereof "this section"; and

(3) by inserting "in a standard termination" after "terminated".

SEC. 8. DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.

Section 4041 (as amended by sections 6 and 7 of this Act) is further amended by inserting after subsection (b) the following new subsection:

"(c) DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS.—

"(1) IN GENERAL.—A single-employer plan may terminate under a distress termination only if—

"(A) the plan administrator provides the 90-day advance notice to affected parties required under subsection (a)(2),

"(B) the requirements of subparagraph (A) of paragraph (2) are met, and

"(C) the corporation determines that the requirements of subparagraph (B) of paragraph (2) are met.

"(2) TERMINATION REQUIREMENTS.—

"(A) INFORMATION SUBMITTED TO THE CORPORATION.—As soon as practicable after the termination date proposed in the notice provided

pursuant to subsection (a)(2), the plan administrator shall provide the corporation, in such form as may be prescribed by the corporation in regulations, the following information:

"(i) such information as the corporation may prescribe by regulation as necessary to make determinations under subparagraph (B) and paragraph (3);

"(ii) certification by an enrolled actuary of—

"(I) the amount (as of the proposed termination date) of the current value of the assets of the plan,

"(II) the actuarial present value (as of such date) of the benefit entitlements under the plan,

"(III) whether the plan is sufficient for benefit entitlements as of such date; and

"(IV) whether the plan is sufficient for guaranteed benefits as of such date;

"(iii) in any case in which the plan is not sufficient for benefit entitlements as of such date—

54-587 O - 86 - 5

"(I) the name and address of each participant and beneficiary under the plan as of such date, and

"(II) such other information as shall be prescribed by the corporation by regulation as necessary to enable the section 4049 trustee to be able to make payments to participants and beneficiaries as required under section 4049; and

"(iv) certification by the plan administrator that the information on which the enrolled actuary based the certifications under clause (ii) and the information provided to the corporation under clauses (i) and (iii) is accurate and complete.

"(B) DETERMINATION BY THE CORPORATION OF NECESSARY DISTRESS CRITERIA.—Upon receipt of the notice of distress termination required under subsection (a)(2) and the information required under subparagraph (A), the corporation shall determine whether the requirements of this subparagraph are met as provided in clause (i), (ii), (iii), or (iv).

"(i) RECENT FUNDING WAIVERS.—The requirements of this subparagraph are met if a funding waiver has been granted with respect to the terminating plan with respect to not fewer than three of the five plan years immediately preceding the termination date, and such a waiver has also been granted to each other single-employer plan of which any of the contributing sponsors of the terminating plan or the substantial members of their controlled groups (if any) is a contributing sponsor with respect to at least one of the three plan years immediately preceding the termination date. For purposes of this clause, the term 'funding waiver' means a waiver of the minimum funding standard under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1954.

"(ii) LIQUIDATION IN BANKRUPTCY OR INSOLVENCY PROCEEDINGS.—The requirements of this subparagraph are met if each of the contributing sponsors and the substantial members of their controlled groups (if any) has filed or has had filed against it as of the termination date a petition seeking liquida-

tion in a case under title 11, United States Code (or under any similar law of a State or political subdivision of a State) which has not, as of the termination date, been dismissed or converted to a case under chapter 11 of such title (or under any similar law of a State or political subdivision of a State) in which reorganization is sought.

"(iii) TERMINATION REQUIRED TO ENABLE PAYMENT OF DEBTS WHILE STAYING IN BUSINESS.—The requirements of this subparagraph are met if a contributing sponsor provides to the corporation substantial evidence that, unless a distress termination occurs, the contributing sponsors and the substantial members of such sponsors' controlled groups (if any) will each be unable to pay their respective debts when due and will be unable to continue in business.

"(iv) UNREASONABLY BURDENSOME PENSION COSTS CAUSED BY DECLINING WORKFORCE.—

"(I) IN GENERAL.—The requirements of this subparagraph are met if, as determined under regulations of the

corporation, solely as a result of a decline in the workforce covered as participants under all single-employer plans maintained by the contributing sponsors of the terminating plan and the members of their controlled groups, the costs of providing pension coverage have become unreasonably burdensome.

"(II) REQUIREMENT MET BY DOUBLING OF COST RATIOS.—The requirements of subclause (I) shall be considered met if and only if the contribution-wage ratio for the plan year in which the termination date occurs is at least twice the contribution-wage ratio for the applicable preceding plan year, and the contribution-income ratio for the plan year in which the termination date occurs is at least twice the contribution-income ratio for the applicable preceding plan year. The corporation may provide by regulation for application of this clause with respect to the plan year of the terminating plan preceding the year in which the termination date occurs, in

lieu of the plan year in which the termination date occurs, in any case in which the corporation determines that such application will enable the corporation to carry out the purposes of this title more equitably and effectively.

"(III) CONTRIBUTION-WAGE RATIO.—For purposes of this clause, the contribution-wage ratio is the ratio of the total required contributions under all single-employer plans of which the persons who are contributing sponsors of the terminating plan or who are members of their controlled groups are contributing sponsors, to the total annualized wages with respect to the active participants under such plans.

"(IV) CONTRIBUTION-INCOME RATIO.—For purposes of this clause, the contribution-income ratio is the ratio of the total required contributions under all single-employer plans of which the persons who are contributing sponsors of the terminating plan or who are members of their controlled groups are

contributing sponsors, to the consolidated gross income of such persons.

"(V) APPLICABLE PRECEDING PLAN YEAR.—For purposes of this clause, the applicable preceding plan year is the later of the plan year following the initial effective date of the plan, the first of the five immediately preceding plan years (if the plan has completed five or more plan years), or the plan year following the effective date of the most recent plan amendment (if any) increasing benefits which was adopted and took effect before the termination date.

"(C) SUBSTANTIAL MEMBER.—For purposes of subparagraph (B), the term 'substantial member' of a controlled group means a person whose assets comprise 5 percent or more of the total assets of the controlled group as a whole. Such term includes any member of the controlled group who does not meet the requirements of the preceding sentence but did meet such requirements—

"(i) for purposes of subparagraph (B)(i), as of the beginning of the earliest applicable plan year referred to therein, or

"(ii) for purposes of subparagraph (B)(ii), as of the date of the filing of the petition referred to therein.

"(D) NOTIFICATION OF DETERMINATIONS BY THE CORPORATION.—The corporation shall notify the plan administrator as soon as practicable of its determinations made pursuant to subparagraph (B).

"(3) TERMINATION PROCEDURE.—

"(A) DETERMINATIONS BY THE CORPORATION RELATING TO PLAN SUFFICIENCY FOR GUARANTEED BENEFITS AND FOR BENEFIT ENTITLEMENTS.—In the event the corporation determines that the requirements for a distress termination set forth in paragraphs (1) and (2) are met, the corporation shall—

"(i) determine whether the plan is sufficient for guaranteed benefits (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation,

"(ii) determine whether the plan is sufficient for benefit entitlements (as of the termination date) or that the corporation is unable to make such determination on the basis of information made available to the corporation, and

"(iii) notify the plan administrator of the determinations made pursuant to this subparagraph as soon as practicable.

"(B) IMPLEMENTATION OF TERMINATION.—After the corporation notifies the plan administrator of its determinations under subparagraph (A), the termination of the plan shall be carried out as provided in clause (i), (ii), or (iii).

"(i) CASES OF SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—In any case in which the corporation determines that the plan is sufficient for benefit entitlements, the plan administrator shall proceed to distribute the plan's assets in the manner described in subsection (b)(3), and take such other actions as may be appropriate to carry out the termination of the plan.

"(ii) CASES OF SUFFICIENCY FOR GUARANTEED BENEFITS WITHOUT A FIND-

ING OF SUFFICIENCY FOR BENEFIT ENTITLEMENTS.—In any case in which the corporation determines that the plan is sufficient for guaranteed benefits, but further determines that the plan is not sufficient for benefit entitlements (or that it is unable to determine whether the plan is sufficient for benefit entitlements on the basis of the information made available to it)—

"(I) the plan administrator shall proceed to distribute the plan's assets in the manner prescribed in section 4044,

"(II) the corporation shall appoint a section 4049 trustee as provided in section 4049(a), notify the plan administrator of the identity of the section 4049 trustee, and submit to such trustee copies of the notice of distress termination and other information provided to the corporation pursuant to subsection (a)(2) and clauses (ii), (iii), and (iv) of paragraph (2)(A), and

"(III) the plan administrator shall notify each contributing sponsor and member of such sponsor's controlled

group of the identity of the section 4049 trustee and that they may be liable under section 4062 in connection with the termination.

"(iii) CASES WITHOUT ANY FINDING OF SUFFICIENCY.—In any case in which the corporation determines that the plan is not sufficient for guaranteed benefits (or that it is unable to determine whether the plan is sufficient for guaranteed benefits on the basis of the information made available to it)—

"(I) the corporation shall commence proceedings in accordance with section 4042, and

"(II) the corporation and the plan administrator shall take the respective actions required under subclauses (II) and (III) of clause (ii) relating to the section 4049 trustee, unless the corporation determines that there are no benefit entitlements under the plan which are not benefits guaranteed by the corporation under section 4022.

"(C) FINDING AFTER AUTHORIZED COMMENCEMENT OF TERMINATION THAT PLAN IS UNABLE TO PAY BENEFITS WHEN DUE.—

"(i) FINDING WITH RESPECT TO GUARANTEED BENEFITS ONLY.—If, after the plan administrator has begun to terminate the plan as authorized by subparagraph (B)(i) or (ii), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay when due all benefits under the plan which are guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter.

"(ii) FINDING WITH RESPECT TO BENEFIT ENTITLEMENTS WHICH ARE NOT GUARANTEED BENEFITS.—If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 4042. If, after the plan administrator has begun to terminate the plan as authorized under subparagraph (B)(i), the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay when due

benefit entitlements which are not benefits guaranteed by the corporation under section 4022, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall take the actions set forth in subparagraph (B)(ii)(II) relating to the section 4049 trustee.

"(D) Administration of the plan during interim period.—During the period commencing on the date the plan administrator provides a notice of distress termination to the corporation under subsection (a)(2) and ending on the date the plan administrator receives notification from the corporation of its determination under subparagraph (A), the plan administrator—

"(i) shall refrain from distributing assets or taking any other actions to carry out the proposed termination under this subsection,

"(ii) shall pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity,

"(iii) shall not use plan assets to purchase irrevocable commitments to provide benefits from an insurer, and

"(iv) shall continue to pay when due all benefit entitlements under the plan, except that in the event the plan administrator receives notification from the corporation that the requirements of paragraph (2)(B) are met, and the other requirements for a distress termination are met, the plan administrator may limit the payment of benefits under the plan to those benefits which are guaranteed by the corporation under section 4022 or to which assets are required to be allocated under section 4044.

"(4) RESTORATION OF PLAN TERMINATED ON THE BASIS OF BANKRUPTCY OR INSOLVENCY UPON CONVERSION OF LIQUIDATION PROCEEDINGS TO REORGANIZATION PROCEEDINGS.—In any case in which—

"(A) a single-employer plan has been terminated under a distress termination and the requirements of paragraph (2)(B) in connection with such termination were met solely on the basis of the filing of a petition seeking liquidation in a

case under title 11, United States Code (or under a similar law of a State or a political subdivision of a State), as provided in paragraph (2)(B)(ii), and

"(B) during the one-year period following the date of the filing of the petition, such case is dismissed or converted to a case under chapter 11 of such title (or under a similar law of a State or a political subdivision of a State) in which reorganization is sought,

the distress termination shall be void and the plan shall be restored to pretermination status (effective as of the termination date).".

(b) CONFORMING AMENDMENTS.—Section 4041 (as amended by the preceding provisions of this Act) is further amended—

(1) by striking out subsection (e); and

(2) by redesignating subsection (f) as subsection (e).

SEC. 9. TERMINATION PROCEEDINGS; DUTIES OF THE CORPORATION.

(a) MANDATORY COMMENCEMENT OF PROCEEDINGS UPON INABILITY OF SINGLE-EMPLOYER PLAN TO PAY BENEFITS THAT ARE CURRENTLY DUE.—

(1) In general.—Section 4042(a) (29 U.S.C. 1342(a)) is amended by striking out in the second sentence "The corporation" and inserting in lieu thereof the following: "The corporation shall as soon as practicable institute court proceedings under this section to terminate a single-employer plan whenever it determines that the plan does not have assets available to pay benefits that are currently due under the terms of the plan. The corporation".

(2) Conforming amendments.—

(A) Section 4042(b)(1) (29 U.S.C. 1342(b)(1)) is amended, in the first sentence, by inserting "or is required under subsection (a) to institute court proceedings under this section," after "to a plan".

(B) Section 4042(c) (29 U.S.C. 1342(c)) is amended in the first sentence by striking out "If the corporation" and all that follows down through "it may," and inserting in lieu thereof the following: "If the corporation is required under subsection (a) of this section to commence court proceedings under this section with respect to a plan or, after issuing a notice under this section to a plan administrator, has determined (whether or not a trustee has been appointed under subsection

(b)) that the plan should be terminated under this section, it shall,".

(b) CLARIFICATION OF AMOUNTS DUE THE CORPORATION.—Section 4042(d)(1)(B)(ii) (29 U.S.C. 1342(d)(1)(B)(ii)) is amended by inserting after "amounts due the plan" the following: ", including but not limited to the collection from the persons obligated to meet the requirements of section 302 of this Act, section 412 of the Internal Revenue Code of 1954, or the terms of the plan".

(c) CONFORMING AMENDMENT.—The heading for section 4042 is amended to read as follows:

"INSTITUTION OF TERMINATION PROCEEDINGS BY THE CORPORATION".

SEC. 10. AMENDMENTS TO LIABILITY PROVISIONS; LIABILITIES RELATING TO BENEFIT ENTITLEMENTS IN EXCESS OF BENEFITS GUARANTEED BY THE CORPORATION.

(a) LIABILITY FOR DISTRESS TERMINATIONS AND TERMINATIONS BY THE CORPORATION.—Section 4062 (29 U.S.C. 1362) is amended by striking out so much as precedes subsection (e) and inserting in lieu thereof the following:

"LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS UNDER A DISTRESS TERMINATION OR A TERMINATION BY THE CORPORATION

"SEC. 4062. (a) IN GENERAL.—In any case in which a single-employer plan is terminated in a distress termination

under section 4041(c) or a termination otherwise instituted by the corporation under section 4042, any person who is, on the termination date, a contributing sponsor of the plan or a member of such a contributing sponsor's controlled group shall incur liability under this section. The liability under this section of all such persons shall be joint and several. The liability under this section consists of—

"(1) liability to the corporation to the extent provided in subsection (b), and

"(2) liability to the section 4049 trustee to the extent provided in subsection (c).

"(b) LIABILITY TO THE CORPORATION.—

"(1) IN GENERAL.—The liability to the corporation of a person described in subsection (a) shall consist of the sum of—

"(A) the amount of the plan's funding shortage (as defined in subsection (d)(1)), and

"(B) the total amount of unfunded guaranteed benefits (as of the termination date) of all participants and beneficiaries under the plan,

together with interest calculated from the termination date.

"(2) PAYMENT OF LIABILITY TO THE CORPORATION.—

"(A) General rule.—Except as provided in subparagraph (B), the liability to the corporation under this subsection shall be due and payable to the corporation as of the termination date, in cash or securities acceptable to the corporation.

"(B) Payments to corporation under profits schedule.—Notwithstanding subparagraph (A), if any person subject to liability under this subsection in connection with a plan termination demonstrates to the satisfaction of the corporation that the liability described in paragraph (1)(B) exceeds 30 percent of the collective net worth of persons subject to liability, any person subject to such liability may satisfy the liability described in paragraph (1)(B) in excess of such 30 percent amount by means of payments under the profits schedule as provided in paragraph (3).

"(3) Annual liability payments under profits schedule.—

"(A) Form of payments.—Each person making liability payments under the profits schedule shall be liable to the corporation for an annual payment, in cash or securities acceptable to the corporation, for each of the ten liability payment years in connection with the terminated plan (sub-

ject to earlier satisfaction of the liability under paragraph (4)(B)).

"(B) AMOUNT OF ANNUAL PAYMENT.—The amount of each annual payment for a liability payment year shall be equal to 10 percent of the sum of the individual pretax profits (if any) of all persons liable under this section in connection with the plan termination for their respective fiscal years ending during such liability payment year.

"(C) DUE DATE.—A person's liability for each annual liability payment referred to in subparagraph (A) for a liability payment year shall accrue as of the end of such year and shall be paid (together with interest accrued from the end of such year) not later than 30 days after the later of—

"(i) the end of such liability payment year, or

"(ii) the latest date on which any person liable for such payment is required to file a Federal income tax return for a fiscal year ending during such liability payment year (taking into account any applicable extensions of time to file such return).

"(4) SATISFACTION OF LIABILITY UNDER PROFITS SCHEDULE.—Notwithstanding paragraph (3)(A)—

"(A) SATISFACTION OF ANNUAL LIABILITY UPON RECEIPT BY CORPORATION OF 10-PERCENT AMOUNT.—The liability to the corporation of all persons who are subject to the profits schedule under this subsection in connection with the same plan termination shall be satisfied with respect to any liability payment year upon receipt by the corporation of one or more liability payments under paragraph (3) for such liability payment year which equal, in the aggregate, the 10-percent amount described in paragraph (3)(A).

"(B) SATISFACTION OF ENTIRE LIABILITY UNDER PROFITS SCHEDULE.—All liability to the corporation under this subsection in connection with the same plan termination with respect to which payment has commenced under the profits schedule under this subsection may be satisfied with respect to all liability payment years at any time by payment by any person to the corporation of the excess of—

"(i) the total amount of liability under this subsection subject to payment under the

profits schedule in connection with such termination (plus interest), over

"(ii) the total amount of prior liability payments previously made by all persons to the corporation under the profits schedule under this subsection in connection with the same plan termination.

"(C) REFUNDS OF EXCESS PAYMENTS.—The corporation shall refund to the payor any amounts paid to the corporation as profits liability payments which are in excess of amounts necessary for satisfaction of liability under subparagraph (A) or (B).

"(5) ALTERNATIVE ARRANGEMENTS.—The corporation and any person liable under this section may agree to alternative arrangements for the satisfaction of liability to the corporation under this subsection.

"(c) LIABILITY TO SECTION 4049 TRUSTEE.—

"(1) IN GENERAL.—A person described in subsection (a) shall be subject to liability to the section 4049 trustee under this subsection if there is an outstanding amount of benefit entitlements under the plan.

"(2) ANNUAL LIABILITY PAYMENTS.—

"(A) FORM OF PAYMENTS.—The liability of any person under this subsection shall consist of

an annual payment to the section 4049 trustee, in cash or securities acceptable to the section 4049 trustee, for each of the ten liability payment years in connection with the terminated plan (subject to earlier satisfaction of the liability under paragraph (3)(B)).

"(B) AMOUNT OF ANNUAL PAYMENT.—The amount of each annual payment shall be equal to 5 percent of the sum of the individual pretax profits (if any) of all persons liable under this section in connection with the plan termination for their respective fiscal years ending during such liability payment year.

"(C) DUE DATE.—A person's liability under this subsection for a liability payment year shall accrue as of the end of such year and shall be paid (with interest accrued from the end of such year) not later than 30 days after the later of—

"(i) the end of such year, or

"(ii) the latest date on which any person subject to liability under this subsection in connection with the same plan termination is required to file a Federal income tax return for a fiscal year ending during such liability

payment year (taking into account applicable extensions of time to file such return).

"(3) SATISFACTION OF LIABILITY.—Notwithstanding paragraph (2)(C)—

"(A) SATISFACTION OF ANNUAL LIABILITY UPON RECEIPT BY TERMINATION TRUSTEE OF 5-PERCENT AMOUNT.—The liability to the section 4049 trustee of all persons who are subject to liability under this subsection in connection with the same plan termination shall be satisfied with respect to any liability payment year upon receipt by the section 4049 trustee of one or more liability payments under this subsection for such liability payment year which equal, in the aggregate, the 5 percent amount described in paragraph (2)(B).

"(B) SATISFACTION OF ENTIRE LIABILITY TO SECTION 4049 TRUSTEE.—All liability to the section 4049 trustee of all persons who are subject to liability under this subsection in connection with the same plan termination may be satisfied with respect to all liability payment years at any time by payment by any person to the section 4049 trustee of an amount equal to the excess of—

"(i) the total outstanding amount of benefit entitlements of all participants and beneficiaries under the plan (plus interest), over

"(ii) the total amount of prior liability payments previously made by all persons to the section 4049 trustee under this subsection in connection with the same plan termination.

"(C) REFUNDS OF EXCESS PAYMENTS.—The section 4049 trustee shall refund to the payor any amount paid to the section 4049 trustee as liability payments which is in excess of amounts necessary for satisfaction of liability under subparagraph (A) or (B).

"(d) DEFINITIONS.—For purposes of this section—

"(1) FUNDING SHORTAGE—The term 'funding shortage', in connection with a terminated plan, means an amount (as of the termination date) equal to the sum of—

"(A) the outstanding balance of the accumulated funding deficiencies (within the meaning of section 302(a)(2) of this Act and section 412(a) of the Internal Revenue Code of 1954) of the plan (if any),

"(B) the outstanding balance of the amount of waived funding deficiencies of the plan waived before such date under section 303 of this Act or section 412(d) of such Code (if any), and

"(C) the outstanding balance of the amount of decreases in the minimum funding standard allowed before such date under section 304 of this Act or section 412(e) of such Code (if any).

"(2) COLLECTIVE NET WORTH OF PERSONS SUBJECT TO LIABILITY.—

"(A) IN GENERAL.—The collective net worth of persons subject to liability in connection with a plan termination consists of the sum of the individual net worths of all persons who—

"(i) have individual net worths which are greater than zero, and

"(ii) are (as of the termination date) contributing sponsors of the terminated plan or members of their controlled groups.

"(B) DETERMINATION OF NET WORTH.—For purposes of this paragraph, the net worth of a person is—

"(i) determined on whatever basis best reflects, in the determination of the corporation, the current status of the person's oper-

ations and prospects at the time chosen for determining the net worth of the person, and

"(ii) increased by the amount of any transfers of assets made by the person which are determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under title 11, United States Code, if the person were a debtor in a case under chapter 7 of such title.

"(C) TIMING OF DETERMINATION.—For purposes of this paragraph, determinations of net worth shall be made as of a day chosen by the corporation (during the 120-day period ending with the termination date) and shall be computed without regard to any liability under this section.

"(3) PRETAX PROFITS.—The term 'pretax profits' means—

"(A) except as provided in subparagraph (B), for any fiscal year of any person, such person's consolidated net income (excluding any extraordinary charges to income and including any extraordinary credits to income) for such fiscal year, as shown on audited financial statements prepared in

accordance with generally accepted accounting principles, or

"(B) for any fiscal year of an organization described in section 501(c) of the Internal Revenue Code of 1954, the excess of income over expenses (as such terms are defined for such organizations under generally accepted accounting principles),

before provision for or deduction of Federal or other income tax, any contribution to any single-employer plan of which such person is a contributing sponsor at any time during the period beginning on the termination date and ending with the end of such fiscal year, and any amounts required to be paid for such fiscal year under this section. The corporation may by regulation require such information to be filed on such forms as may be necessary to determine the existence and amount of such pretax profits.

"(4) LIABILITY PAYMENT YEARS.—The liability payment years in connection with a terminated plan consist of the ten consecutive one-year periods, the first of which is the earlier of—

"(A) the first of the consecutive one-year periods, following the last plan year preceding the termination date, in which any person liable under

this section in connection with the plan termination earns a pretax profit, or

"(B) the fourth of the consecutive one-year periods following the last plan year preceding the termination date.".

(b) Clerical Amendment.—Subsection (e) of section 4062 is amended by inserting "Treatment of Substantial Cessation of Operations.—" after "(e)".

SEC. 11. DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEE.

Subtitle C of title IV is amended by adding at the end thereof the following new section:

"DISTRIBUTION TO PARTICIPANTS AND BENEFICIARIES OF LIABILITY PAYMENTS TO SECTION 4049 TRUSTEE

"Sec. 4049. (a) Appointments of Trustee; Establishment of Trust.—Whenever the corporation is required under section 4041(c)(3)(B)(ii) or (iii) to appoint a section 4049 trustee, it shall appoint either itself or another person to act as the section 4049 trustee. The trustee appointed under this section shall establish a separate trust with respect to the terminated plan. The trust established by the section 4049 trustee shall be used exclusively for—

"(1) receiving liability payments under section 4062(c) from the persons who were (as of the termina-

tion date) contributing sponsors of the terminated plan and members of their controlled groups,

"(2) making distributions as provided in this section to the persons who were (as of the termination date) participants and beneficiaries under the terminated plan, and

"(3) defraying the reasonable administrative expenses incurred by the section 4049 trustee in carrying out its responsibilities under this section.

The section 4049 trustee shall establish and maintain such trust for such period of time as is necessary to receive all liability payments required to be made to the trustee under section 4062(c) and to make all distributions required to be made to participants and beneficiaries under this section.

"(b) DISTRIBUTIONS BY TRUSTEE.—

"(1) IN GENERAL.—Not later than 30 days after the end of each liability payment year (described in section 4062(d)(4)) with respect to a terminated single-employer plan, the trustee appointed under this section with respect to such plan shall distribute from the trust maintained by the trustee pursuant to subsection (a) to each person who was (as of the termination date) a participant or beneficiary under the plan—

"(A) in any case not described in subparagraph (B), an amount equal to the outstanding

amount of benefit entitlements of such person under the plan (including interest calculated from the termination date), to the extent not previously paid under this paragraph, or

"(B) in any case in which the balance in the trust at the end of such year (after taking into account liability payments received under subsection (a)(1) and administrative expenses paid under subsection (a)(3)) is less than the total of all amounts described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan, the product derived by multiplying—

"(i) the amount described in subparagraph (A) in connection with each such person, by

"(ii) a fraction—

"(I) the numerator of which is such balance in the trust, and

"(II) the denominator of which is equal to the total of all amounts described in subparagraph (A) in connection with all persons who were (as of the termination date) participants and beneficiaries under the terminated plan.

"(2) CARRY-OVER OF MINIMAL PAYMENT AMOUNTS.—The trustee may withhold a payment to any person under this subsection in connection with any liability payment year (other than the last liability payment year with respect to which payments under paragraph (1) are payable) if such payment does not exceed $25. In any case in which such a payment is so withheld, the payment to such person in connection with the next following liability payment year shall be increased by the amount of such withheld payment.

"(c) REGULATIONS.—The corporation may issue such regulations as it considers necessary to carry out the purposes of this section.".

SEC. 12. TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION.

Subtitle D of title IV is amended by adding at the end thereof the following new section:

"TREATMENT OF TRANSACTIONS TO EVADE LIABILITY; EFFECT OF CORPORATE REORGANIZATION

"SEC. 4069. (a) TREATMENT OF TRANSACTIONS TO EVADE LIABILITY.—If a principal purpose of any transaction is to evade liability under this subtitle—

"(1) this subtitle shall be applied (and liability shall be determined and collected) without regard to such transaction, and

"(2) any person who entered into such transaction with such principal purpose shall be treated as subject to liability under this subtitle in connection with the termination of such plan as if such person were a contributing sponsor of such plan as of the termination date.

"(b) EFFECT OF CORPORATE REORGANIZATION.—For purposes of this subtitle, the following rules apply in the case of certain corporate reorganizations:

"(1) CHANGE OF IDENTITY, FORM, ETC.—If a person ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the person to whom this subtitle applies.

"(2) LIQUIDATION INTO PARENT CORPORATION.—If a person ceases to exist by reason of liquidation into a parent corporation, the parent corporation shall be treated as the person to whom this subtitle applies.

"(3) MERGER, CONSOLIDATION, OR DIVISION.—If a person ceases to exist by reason of a merger, consoli-

dation, or division, the successor corporation or corporations shall be treated as the person to whom this subtitle applies.".

SEC. 13. ADDITIONAL ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS.

Subtitle D of title IV (as amended by section 12) is further amended by adding at the end thereof the following new section:

"ADDITIONAL ENFORCEMENT AUTHORITY RELATING TO TERMINATIONS OF SINGLE-EMPLOYER PLANS

"SEC. 4070. (a) IN GENERAL.—A person who is with respect to a single-employer plan a fiduciary, employer, contributing sponsor, member of a contributing sponsor's controlled group, participant, or beneficiary, and who is adversely affected by an act or practice of any party in violation of any provision of section 4041, 4042, 4049, 4062, 4063, 4064, or 4069, or an employee organization which represents such a participant or beneficiary for purposes of collective bargaining with respect to such plan, may bring an action—

"(1) to enjoin such act or practice, or

"(2) to obtain other appropriate equitable relief (A) to redress such violation or (B) to enforce such provision.

"(b) STATUS OF PLAN AS PARTY TO ACTION AND WITH RESPECT TO LEGAL PROCESS.—A single-employer plan may be sued under this section as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of a single-employer plan in such trustee's or administrator's capacity as such shall constitute service upon the plan. If a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the corporation shall constitute such service. The corporation, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service. Any money judgment under this section against a single-employer plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in such person's individual capacity.

"(c) JURISDICTION AND VENUE.—The district courts of the United States shall have exclusive jurisdiction of civil actions under this section. Such actions may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found. The district courts of the United States shall have jurisdiction, without regard to the

amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) in any action.

"(d) RIGHT OF CORPORATION TO INTERVENE.—A copy of the complaint in any action under this section shall be served upon the corporation by certified mail. The corporation shall have the right in its discretion to intervene in any action.

"(e) RIGHT OF CORPORATION TO ATTORNEY REPRESENTATION.—In all civil actions under this section, attorneys appointed by the corporation may represent the corporation.

"(f) VENUE OF SUITS AGAINST THE CORPORATION.—Suits under this section to review a final determination or order of the corporation, to restrain the corporation from taking any action contrary to the provisions of sections 4041, 4042, 4062, 4063, 4064, and 4069, or to compel the corporation to take action required under such provisions, may be brought in the district court of the United States for the district where the plan has its principal office or in the United States District Court for the District of Columbia.

"(g) AWARDS OF COSTS AND EXPENSES.—

"(1) GENERAL RULE.—In any action brought under this section, the court in its discretion may award all or a portion of the costs and expenses incurred in connection with such action, including rea-

sonable attorney's fees, to any party who prevails or substantially prevails in such action.

"(2) SPECIAL RULE FOR STANDARD TERMINATION VIOLATIONS.—If, in any action brought under this section the plaintiff alleges a violation of any requirement of section 4041(b) (relating to the termination of a single-employer plan in a standard termination), and, in the judgment of the court, the plaintiff substantially prevails on such allegation, the court shall award to the plaintiff the costs and expenses incurred in connection with such action (including reasonable attorney's fees).

"(3) SPECIAL RULE FOR FAILURE TO MAKE LIABILITY PAYMENT.—In the case of a failure to make timely payment of any liability payment under section 4062(c), the court, in any action for enforcement under this section relating to such failure, shall award to the plaintiff the costs and the expenses incurred in connection with such action (including reasonable attorney's fees), unless the defendant demonstrates that the failure to make the liability payment was based on reasonable cause.

"(4) EXEMPTION FOR PLANS.—Notwithstanding the preceding provisions of this subsection, no plan

shall be required in any action to pay any costs and expenses (including attorney's fees).

"(h) TIME LIMITATION.—An action under this section may not be brought after the later of—

"(1) 6 years after the date on which the cause of action arose, or

"(2) 3 years after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action; except that in the case of fraud or concealment, such action may be brought not later than 6 years after the date of discovery of the existence of such cause of action.".

SEC. 14. CONFORMING, CLARIFYING, TECHNICAL, AND MISCELLANEOUS AMENDMENTS.

(a) CONFORMING AMENDMENTS RELATING TO PLAN TERMINATIONS.—

(1) CREDITS TO PENSION BENEFIT GUARANTY FUNDS.—Section 4005(b)(1)(C) (29 U.S.C. 1305(b)(1)(C)) is amended by inserting "terminated under section 4041(c) or" after "a plan".

(2) APPLICABILITY OF ASSET ALLOCATION RULES.—Section 4044(c) (29 U.S.C. 1344(c)) is amended in the first sentence by striking out "the period beginning" and all that follows down through

"is to be allocated" and inserting in lieu thereof the following:

"the period beginning—

"(1) in the case of a standard or distress termination under section 4041, on the termination date, or

"(2) in the case of a termination by the corporation under section 4042, on the later of (A) the date a trustee is appointed under section 4042(b), or (B) the termination date,

is to be allocated".

(3) TERMINATION DATE.—Section 4048(a) (29 U.S.C. 1348(a)) is amended—

(A) by striking out "date of termination" and inserting in lieu thereof "termination date";

(B) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(C) in paragraph (2) (as redesignated), by inserting "in a distress termination" after "terminated" and by striking out "section 4041" and inserting in lieu thereof "section 4041(c)";

(D) by inserting before paragraph (2) (as redesignated) the following new paragraph:

"(1) in the case of a plan terminated in a standard termination in accordance with the provisions of sec-

tion 4041(b), the date specified in the notice provided under section 4041(a)(2)";

and

(E) in paragraph (4) (as redesignated), by striking out "in accordance with the provisions of either section" and inserting in lieu thereof "under section 4041(c) or 4042".

(4) CONFORMING SPECIAL LIABILITY RULES WITH RESPECT TO CERTAIN SINGLE-EMPLOYER PLANS WITH MULTIPLE CONTROLLED GROUPS.—

(A) LIABILITY OF SUBSTANTIAL EMPLOYER FOR WITHDRAWAL.—

(i) Section 4063(a) (29 U.S.C. 1363(a)) is amended—

(I) by striking out "plan under which more than one employer makes contributions (other than a multiemployer plan)" and inserting in lieu thereof "single-employer plan which has two or more contributing sponsors at least two of whom are not under common control";

(II) in paragraph (1), by striking out "withdrawal of a substantial employer" and inserting in lieu thereof

"withdrawal during a plan year of a substantial employer for such plan year";

(III) in paragraph (2), by striking out "of such employer" and all that follows and inserting in lieu thereof "of all persons with respect to the withdrawal of the substantial employer";

(IV) by striking out "whether such employer is liable for any amount under this subtitle with respect to the withdrawal" and inserting in lieu thereof "whether there is liability resulting from the withdrawal of the substantial employer"; and

(V) by striking out "notify such employer" and inserting in lieu thereof "notify the liable persons".

(ii) Section 4063(b) (29 U.S.C. 1363(b)) is amended—

(I) by striking out "an employer" and all that follows down through "shall be liable" and inserting in lieu thereof "any one or more contributing sponsors who withdraw, during a plan

year for which they constitute a substantial employer, from a single-employer plan, to which section 4021 applies and which has two or more contributing sponsors at least two of whom are not under common control, shall, upon notification of such contributing sponsors by the corporation as provided by subsection (a), be liable, together with the members of their controlled groups,";

(II) by striking out "such employer's";

(III) by striking out "the employer's withdrawal" and inserting in lieu thereof "the withdrawal referred to in subsection (a)(1)";

(IV) in paragraph (1), by striking out "such employer" and inserting in lieu thereof "such contributing sponsors";

(V) in paragraph (2), by striking out "all employers" and inserting in lieu thereof "all contributing sponsors"; and

(VI) by striking out "the liability of each such employer" and inserting in lieu thereof "such liability".

(iii) Section 4063(c) (29 U.S.C. 1363(c)) is amended—

(I) in paragraph (1), by striking out "In lieu of payment of his liability under this section the employer" and inserting in lieu thereof "In lieu of payment of a contributing sponsor's liability under this section the contributing sponsor";

(II) in paragraph (2), by inserting "under section 4041(c) or 4042" after "terminated", by striking out "of such employer", and by striking out "to the employer (or his bond canceled)" and inserting in lieu thereof "(or the bond canceled)"; and

(III) in paragraph (3), by inserting "under section 4041(c) or 4042" after "terminates".

(iv) Section 4063(d) (29 U.S.C. 1363(d)) is amended—

(I) by striking out "Upon a showing by the plan administrator of a plan (other than a multiemployer plan) that the withdrawal from the plan by any employer or employers has resulted" and inserted in lieu thereof "Upon a showing by the plan administrator of the plan that the withdrawal from the plan by one or more contributing sponsors has resulted";

(II) by striking out "by employers"; and

(III) in paragraph (1), by striking out "their employer's" and inserting in lieu thereof "the".

(v) Section 4063(e) (29 U.S.C. 1363(e)) is amended—

(I) by striking out "to any employer or plan administrator"; and

(II) by striking out "all other employers" and inserting in lieu thereof "contributing sponsors".

(vi) The heading for section 4063 is amended by adding at the end thereof the

following "FROM SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS.".

(B) ALLOCATION OF LIABILITY ON TERMINATION OF CERTAIN SINGLE-EMPLOYER PLANS.—

(i) Section 4064(a) (29 U.S.C. 1364(a)) is amended—

(I) by striking out "all employers who maintain a plan under which more than one employer makes contributions (other than a multiemployer plan)" and inserting in lieu thereof "all contributing sponsors of a single-employer plan which has two or more contributing sponsors at least two of whom are not under common control"; and

(II) by inserting "under section 4041(c) or 4042" after "terminated".

(ii) Section 4064(b) (29 U.S.C. 1364(b)) is amended—

(I) by striking out "liability of each such employer" and inserting in lieu thereof "liability with respect to each contributing sponsor and each member of its controlled group";

(II) by striking out "under section 4062(b)(1)";

(III) by striking "each employer" the first place it appears and inserting in lieu thereof "each contributing sponsor and member of its controlled group";

(IV) in paragraph (1), by striking out "each employer" and inserting in lieu thereof "members of such controlled group";

(V) in paragraph (2), by striking out "such employers" and inserting in lieu thereof "contributing sponsors";

(VI) by striking out "5 years," in paragraph (2) and all that follows down through "employer." and inserting in lieu thereof "5 years."; and

(VII) in the last sentence, by striking out "of each such employer" and inserting in lieu thereof "of each such contributing sponsor and member of its controlled group".

(iii) The heading for section 4064 is amended to read as follows:

"LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS".

(C) ANNUAL NOTIFICATION TO SUBSTANTIAL EMPLOYERS.—Section 4066 (29 U.S.C. 1366) is amended—

(i) by striking out "each plan under which contributions are made by more than one employer (other than a multiemployer plan)" and inserting in lieu thereof "each single-employer plan which has at least two contributing sponsors at least two of whom are not under common control";

(ii) by striking out "any employer making contributions under that plan" and inserting in lieu thereof "any contributing sponsor of the plan"; and

(iii) by striking out "that he is a substantial employer" and inserting in lieu thereof "that such contributing sponsor comprises with others a substantial employer".

(5) ADDITIONAL AMENDMENTS RELATING TO RECOVERY OF AMOUNTS OF LIABILITY.—

(A) Section 4067 (29 U.S.C. 1367) is amended—

(i) by striking out "employers" and inserting in lieu thereof "contributing sponsors and members of their controlled groups"; and

(ii) by inserting "of amounts of liability to the corporation accruing as of the termination date" after "deferred payment".

(B)(i) Section 4068 (29 U.S.C. 1368) is amended—

(I) in subsection (a), by striking out "employers" the first place it appears and inserting in lieu thereof "person", by striking out "neglect or refuse" and inserting in lieu thereof "neglects or refuses", and by striking out "employer or employers" and inserting in lieu thereof "person";

(II) in subsection (d)(1), by striking out "employer" and inserting in lieu thereof "liable person";

(III) in subsection (d)(2), by striking out "employer" each place it appears and inserting in lieu thereof "liable person"; and

(IV) in subsection (e), by striking out "employer or employers" and inserting in lieu thereof "liable person".

(ii) Section 4068 is further amended by striking out subsection (c)(1) (29 U.S.C. 1368(c)(1)) and inserting in lieu thereof the following:

"(c)(1) Except as otherwise provided under this section, the priority of a lien imposed under subsection (a) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954 with respect to liens thereunder. Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

"(A) 'lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

"(B) 'the corporation' for 'the Secretary' in subsections (a) and (b)(9)(C);

"(C) 'the payment of the amount on which the lien is based' for 'the collection of any tax under this title' in subsection (b)(3);

"(D) 'a person whose property is subject to the lien' for 'the taxpayer' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

"(E) 'such person' for 'the taxpayer' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

"(F) 'payment of the loan value of the amount on which the lien is based is made to the corporation' for 'satisfaction of a levy pursuant to section 6332(b)' in subsection (b)(9)(C);

"(G) 'section 4068 lien' for 'tax lien' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

"(H) 'the date on which the lien is first filed' for 'the date of the assessment of the tax' in subsection (g)(3)(A).".

(b) CLARIFICATION OF DESCRIPTION OF CERTAIN INFORMATION REQUIRED TO BE FILED IN ANNUAL REPORT.—

(1) IN GENERAL.—Section 103(d)(6) (29 U.S.C. 1023(d)(6)) is amended to read as follows:

"(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

"(A) the current value of the assets of the plan,

"(B) the present value of all nonforfeitable benefits for participants and beneficiaries receiving payments under the plan,

"(C) the present value of all nonforfeitable benefits for all other participants and beneficiaries,

"(D) the present value of all accrued benefits which are not nonforfeitable (including a separate accounting of such benefits which are benefit entitlements, as defined in section 4001(a)(16)), and

"(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).".

(2) CONFORMING AMENDMENT.—Section 104(a)(2)(A) (29 U.S.C. 1024(a)(2)(A)) is amended by striking out the second sentence.

(3) TRANSITION RULES.—Any regulations, modifications, or waivers which have been issued by the Secretary of Labor with respect to section 103(d)(6) of the Employee Retirement Income Security Act of 1974 (as in effect immediately before the date of the enactment of this Act) shall remain in full force and effect until modified by any regulations with respect to such section 103(d)(6) prescribed by the Pension Benefit Guaranty Corporation.

(c) ADDITIONAL AMENDMENTS.—

(1) DEFINITIONS FOR TITLE I.—Section 3 (29 U.S.C. 1002) is amended—

(A) in paragraph (37)(A), by inserting "pension" before "plan"; and

(B) by adding after paragraph (40) the following new paragraph:

"(41) The term 'single-employer plan' means any pension plan which is not a multiemployer plan.".

(2) NOTICE OF REQUEST FOR WAIVERS OF MINIMUM FUNDING STANDARDS AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section 303 (29 U.S.C. 1083) is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection:

"(d)(1) Before granting a waiver under this section, the Secretary shall require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who would qualify as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of the Internal Revenue Code of 1954 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of an application for a determination under section 3001(a) and each employee organization representing such an employee.

"(2) After granting a waiver under this section, the Secretary may modify the terms and conditions under which the waiver was granted if the Secretary determines that this is appropriate taking into account all the facts and circumstances.

"(3) The Secretary shall consider any relevant information submitted by a recipient of the notification described in paragraph (1) relating to the propriety of granting the waiver or of subsequently modifying the terms and conditions thereof.".

(3) NOTICE OF REQUEST FOR EXTENSIONS OF AMORTIZATION PERIOD AND RIGHT TO SUBMIT RELEVANT INFORMATION.—Section 304 (as amended by section 112(b)(2) of this Act) (29 U.S.C. 1084) is further amended by adding at the end thereof the following new subsection:

"(d)(1) Before granting an extension under this section, the Secretary shall require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who would qualify as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of the Internal Revenue Code of 1954 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of an application for a determina-

tion under section 3001(a) and each employee organization representing such an employee.

"(2) After granting an extension under this section, the Secretary may modify the terms and conditions under which the extension was granted if the Secretary determines that this is appropriate taking into account all the facts and circumstances.

"(3) The Secretary shall consider any relevant information submitted by a recipient of the notification described in paragraph (1) relating to the propriety of granting the extension or of subsequently modifying the terms and conditions thereof.".

(4) TECHNICAL CORRECTION.—Section 4003(f) (29 U.S.C. 1303(f)) is amended, in the first sentence, by striking out "employee" and inserting in lieu thereof "employer".

(5) REPEAL OF EXPIRED AUTHORITY.—Section 4004 (29 U.S.C. 1304) is repealed.

(6) VOTING BY CORPORATION OF STOCK PAID AS LIABILITY.—Section 4005 (29 U.S.C. 1305) is amended by adding at the end thereof the following new subsection:

"(g) Any stock in a person liable to the corporation under this title which is paid to the corporation by such person or a member of such person's controlled group in sat-

isfaction of such person's liability under this title may be voted only by the custodial trustees or outside money managers of the corporation.".

(7) TREATMENT OF PLAN.—Section 4021(b) (29 U.S.C. 1321(b)) is amended—

(A) in paragraph (12), by striking out "or" at the end thereof;

(B) in paragraph (13), by striking out "plan." and inserting in lieu thereof "plan; or"; and

(C) by adding after paragraph (13) the following new paragraph:

"(14) which is established and maintained by a corporation established by Act of Congress to act in matters of relief under the Treaty of Geneva of August 22, 1864.".

(8) EFFECTIVE YEARS.—Section 4022(b)(7) (29 U.S.C. 1322(b)(7)) is amended by striking out "following" and inserting in lieu thereof "beginning with".

(9) CONFORMING AMENDMENT.—Section 4042(d)(3) (29 U.S.C. 1342(d)(3)) is amended by striking out "same duties as a trustee appointed under section 47 of the Bankruptcy Act" and inserting in lieu thereof "same duties as those of a trustee under section 704 of title 11, United States Code".

(10) CLERICAL CORRECTIONS.—Section 4044(a)(4) (29 U.S.C. 1344(a)(4)(A)) is amended—

(A) in subparagraph (A), by striking out "section 4022(b)(5)" and inserting in lieu thereof "section 4022B(a)"; and

(B) in subparagraph (B), by striking out "section 4022(b)(6)" and inserting in lieu thereof "section 4022(b)(5)".

(11) TREATMENT OF LIEN.—Section 4068(c)(2) (29 U.S.C. 1368(c)(2)) is amended to read as follows:

"(2) In any case under title 11, United States Code, any lien imposed under subsection (a) and perfected within the meaning of section 545(2) of such title shall be treated as securing an allowed claim under section 506 of such title, subject only to the limitations imposed by section 6323 of the Internal Revenue Code of 1954. Any claim for the unpaid amount of liability under section 4062, 4063, or 4064 for which a lien has not been perfected shall be treated in the same manner as a claim for a tax on income having priority under section 507(a)(6) of such title. In the case of any insolvency proceeding (other than a case under such title 11), any lien imposed under subsection (a) shall be treated, for purposes of section 3713 of title 31, United States Code, in the same manner as a lien securing a debt due and owing to the United States to which such section applies.".

(12) RELEASE OF LIEN.—Section 4068(e) (29 U.S.C. 1368(e)) is amended by striking out ", with the consent of the board of directors,".

(d) AMENDMENTS TO THE TABLE OF CONTENTS OF ERISA.—The table of contents in section 1 is amended—

(1) by striking out the item relating to section 4004;

(2) by striking out the item relating to section 4042 and inserting in lieu thereof the following new item:

"Sec. 4042. Institution of termination proceedings by the corporation.";

(3) by inserting after the item relating to section 4048 the following new item:

"Sec. 4049. Distribution to participants and beneficiaries of liability payments to section 4049 trustee."; and

(4) by striking out the items relating to subtitle D of title IV and inserting in lieu thereof the following new items:

"Subtitle D—Obligations of the Corporation; Liability of Employers and Other Persons

"Sec. 4061. Amounts payable by the corporation.
"Sec. 4062. Liability for termination of single-employer plans under a distress termination or a termination by the corporation.
"Sec. 4063. Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups.
"Sec. 4064. Liability on termination of single-employer plans under multiple controlled groups.
"Sec. 4065. Annual report of plan administrator.
"Sec. 4066. Annual notification of substantial employers.
"Sec. 4067. Recovery of employer liability for plan termination.
"Sec. 4068. Lien for liability of employer.
"Sec. 4069. Treatment of transactions to evade liability; effect of corporate reorganization.
"Sec. 4070. Additional enforcement authority relating to terminations of single-employer plans.".

SEC. 15. EFFECTIVE DATE.

Except as otherwise provided in this Act, the provisions of this Act shall take effect on the date of enactment of this Act.

Mr. CLAY. The subcommittee will come to order.

Today, the subcommittee will hear testimony on three bills, H.R. 2811, H.R. 2812, and H.R. 2813. These bills relate to the Single-Employer Pension Plan Insurance System established under title IV of ERISA in 1974 and administered by the Pension Benefit Guaranty Corporation.

As in the past, these bills represent a bipartisan approach. I am pleased that the distinguished ranking member of the subcommittee, Congresswoman Roukema, joined me in introducing these bills a few weeks ago.

The serious financial problems faced by the Pension Benefit Guaranty Corporation are well known and well documented. Over 3 years ago, the administration asked Congress to approve a premium increase to shore up the Single-Employer Program. At that time, the business community vigorously objected to the premium increase unless it was coupled with a major restructuring of the Single-Employer Insurance System to limit access to PBGC assistance to cases of genuine business hardship.

For over 3 years now, we have been trying to accommodate the competing interests of all interested parties and fashion a reform package which provided reasonable protection to the PBGC while not unnecessarily disrupting normal business operations.

The bills before us today represent our response to the problems of the PBGC and the concerns expressed by all interested parties. We have simplified and streamlined the proposals, removing virtually all of the features which engendered strong opposition from some members of the business community last year.

Generally, the bills would strengthen the agency program in two ways: one, by increasing the premium for single-employer plans from the current $2.60 per year per plan participant to $8.50 effective January 1, 1986; and, two, by restructuring the program to limit access to PBGC assistance only to cases in which workers' pensions are jeopardized because their employers are in genuine financial difficulty.

In addition to correcting some of the weaknesses in current law which encourage dumping of liabilities on the PBGC, the bills also correct a serious loophole in ERISA which has caused loss of benefits for plan participants.

Ongoing employers have been able to share their obligations under title I of ERISA to pay workers their full accrued and vested benefits by voluntarily terminating pension plans. The simple filing of a termination notice with the corporation, without any showing of financial hardship at all, can relieve employers of their legal responsibility to provide workers with their hard-earned vested benefits. I consider this form of dumping just as serious as the dumping of liabilities on the PBGC, and I believe correction of both problems must be handled at the same time.

My colleague, Congresswoman Roukema, yesterday introduced the administration's bill to reform the insurance system. I'm pleased that in most major respects the administration's proposals and our proposals are similar. That should simplify our consideration of the bills and enable us to move them quickly. We are hoping to mark them up before the August recess and therefore urge our witnesses and others who have reviewed the bills in detail

to provide the subcommittee with written comments as soon as possible.

As many of you know, both House and Senate budget resolutions assume that a premium increase will be enacted this year. I intend to do everything in my power to see that both the premium increase and reforms are enacted within the timeframe.

Mrs. Roukema.

Mrs. ROUKEMA. Thank you, Mr. Chairman.

I'm more than pleased to join with you today in making the Single-Employer Pension Plan Amendments Act of 1985 a legislative priority for this subcommittee. Our three-bill package is designed to bolster the long-term self-financing nature of ERISA's title IV, the Single-Employer Termination Insurance Program.

The legislation represents a refinement of the provisions our subcommittee ordered and reported in the last Congress, as you have outlined. This 1985 version of the plan has been distilled to accommodate the suggestions of various interested parties, and those elements of last year's measure that have received the most debate have either been eliminated or modified significantly.

Coupled with the suggestions for ERISA title IV changes we have received from the administration, this legislative package represents a realistic framework, I'm convinced, from which the necessary consensus can be developed for enactment of the reforms into law, hopefully this year.

During the debate on these reforms over the past several years, organizations representing employees and retirees have expressed their concerns, justifiable, in my opinion, that unless legislation is enacted to protect the financial stability of the Single-Employer Program, then current benefit guarantee levels may become in jeopardized or curtailed.

It should be pointed out that the pension benefit guarantees under title IV are not entitlements but are dependent for their payment on the financial condition of the PBGC. This comprehensive legislation before us today contains the key features recommended by the PBGC as well as several generations of labor-management advisory panels as being necessary to the continued operation of the title IV program in a cost-effective manner which is fully protective of participants' interests.

In order to amortize the Single-Employer Program deficit currently estimated at $462 million and to prevent the deficit's rapid escalation to nearly $6 billion by the end of this century, the legislation raises the premium from $2.60 per capita effective for 1986 plan years.

The administration has recommended a premium increase to $7.50 effective retroactively for 1985. The difference between $7.50 and $8.50 is narrowed actuarily inasmuch as the $8.50 is not retroactive but made prospective for the 1986 plan's years.

I would like for our witnesses today to speak to the issues of whether the premium increase should be prospective or retroactive as proposed by the administration.

Other features of the legislation you have quite accurately outlined, Mr. Chairman. I would like unanimous consent for the full context of my remarks to be enclosed in the record.

Mr. CLAY. Yes, without objection.

Mrs. ROUKEMA. In conclusion, I should like to point out another issue that I would encourage our witnesses to address as there are several alternative provisions designed to give a plan and therefore the PBGC additional security against default in the repayment of the amount of any funding waiver obtained by the plan's sponsor prior to plan termination.

This question of a funding waiver is controversial. Funding waivers have contributed significantly to PBGC's current deficit, and therefore a workable provision needs to be settled on for inclusion in our July 31 markup, as tentatively scheduled.

Mr. Chairman, these changes represent a major restructuring in the Single-Employer Termination Insurance Program. Many of the obstacles in the path of this legislation have been removed. I look forward to working with you in a bipartisan manner to clear up any remaining imperfections as we proceed toward the goal of securing early passage of this legislation.

[The prepared statement of Hon. Marge Roukema follows:]

PREPARED STATEMENT OF HON. MARGE ROUKEMA A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. Chairman, I am pleased to join you today in making the Single Employer Pension Plan Amendments Act of 1985 a legislative priority of our Subcommittee on Labor-Management Relations.

Our three-bill legislative package (H.R. 2811, 2812, and 2813) is designed to bolster the long-term self-financing nature of ERISA's Title IV single employer termination insurance program. The legislation represents a refinement of the provisions our Subcommittee ordered reported in last Congress. This 1985 version of the single employer termination insurance reform has been distilled to accommodate the suggestions of various interested parties, and those elements of last years measure that have received the most debate have been either eliminated or modified significantly. Coupled with the suggestions for ERISA Title IV changes we have received from the Administration, this legislative package represents a realistic framework from which the necessary consensus can be developed for enactment of the reforms into law.

During the debate on these reforms over the last past several years, organizations representing employees and retirees have expressed their concern, justifiable in my opinion, that unless legislation is enacted to protect the financial stability of the single employer program then current benefit guarantee levels may become in jeopardy of curtailment. It should be pointed out that the pension benefit guarantees under Title IV are not entitlements but are dependent for their payment on the financial condition of the Pension Benefit Guaranty Corporation (PBGC). The comprehensive legislation before us today contains the key features recommended by the PBGC as well as several generations of labor-management advisory panels as being necessary to the continued operation of the Title IV program in a cost effective manner which is fully protective of participant interests.

In order to amortize the single employer program deficit currently estimated at $462 million and prevent the deficit's rapid escalation to nearly $6 billion by the end of this century, the legislation raises the single employer premium from $2.60 to $8.50 per capita effective for 1986 plan years.

The Administration has recommended a premium increase to $7.50 effective retroactively for 1985 plan years. The difference between the $7.50 and the $8.50 is narrowed actuarially inasmuch as the $8.50 is not retroactive but made prospective for 1986 plan years. I would like for our witnesses today to speak to the issue of whether the premium increase should be made prospective or retroactive as proposed by the Administration.

Other features of the legislation are designed to discourage the "dumping" of pension liabilities onto the PBGC and saddling the remaining plan sponsors with the obligation to fund such liabilities. In order to discourage employers having low networth from terminating their underfunded plans and transfering their debts to the other employers supporting the system, the conditions under which a plan is allowed to terminate are tightened up to require that the employer and its control group demonstrate a significant "distress" situation such that without relief the

continued viability of the employer and its control group would be threatened. Employers would still be allowed to terminate their plans under a standard termination as long as the plan is sufficient to pay nonforfeitable benefits. In addition the ability of plans under current law to "freeze" future service and continue plan funding is retained and codified.

To prevent abuse of the system another provision of the legislation makes additional parties liable to the PBGC if a principal purpose of a related transaction is to evade liability in connection with a plan termination under Title IV.

Additionally, in order to discourage the termination of under funded pension plans by ongoing employers, the amount for which an ongoing employer is liable to the PBGC is increased above the present law 30 percent of net worth cap to include a 10 year 10 percent of pretax profits provision. An additional penalty equal to 5 percent of pretax profits for up to 10 years would be payable to a termination trust providing for payment of nonforfeitable benefits above the current level of PBGC guarantees. By discouraging the termination of under funded pension plans the legislation would reduce the administrative costs of the Title IV program. Administrative costs would also be reduced under the proposed legislation by streamlining the procedure for closing out fully funded plans. Since the passage of ERISA, almost 98 percent of all terminated plans have been found to be sufficient. PBGC costs in connection with the termination of such plans would be reduced by allowing plan administrators and enrolled actuaries to certify to the PBGC as to their sufficiency.

Another issue I would encourage our witnesses to address are several alternative provisions designed to give a plan and, therefore, the PBGC additional security against default in the repayment of the amount of any funding waiver obtained by the plan sponsor prior to plan termination. Funding waivers have contributed significantly to PBGC's current deficit and, therefore, a workable provision needs to be settled on for inclusion in our July 31st markup of the legislation.

Mr. Chairman, these changes represent a major restructuring in the single employer termination insurance program. Many of the obstacles in the path of this legislation have been removed. I look forward to working with you in a bipartisan manner to clear up any remaining imperfections toward the goal of securing the legislation's early passage.

Mr. Clay. Thank you.

The first witnesses today will consist of a panel: Mary Belcher, Earlie Putman, and Jacob Clayman.

Without objection, your statements will be included in the record at this point. You may proceed as you desire.

STATEMENTS OF MARY BELCHER, OF MICHIGAN, RETIREE OF THE AUTOMOTIVE DIVISION, LEAR SIEGLER, INC.; EARLIE PUTMAN, JR., OF MISSOURI, RETIREE OF THE FEDERAL DIVISION OF FEDERAL FORGE, INC., A SUBSIDIARY OF WALCO NATIONAL CORP.; AND JACOB CLAYMAN, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS, A PANEL

Mrs. Belcher. My name is Mary Belcher. I live in Livonia, MI.

I used to work at the Lear Siegler Automotive Division plant in Detroit, MI. Lear Siegler is a multinational corporation with 51 operating divisions, 200 product lines, and over 30,000 employees. The Automotive Division plant in Detroit used to produce parts for the automobile industry. At its peak, it employed 2,500 workers.

I began work at the Automotive Division in 1948 and continued working there for 32 years until the plant closed in 1980. During that period of time, I worked as an assembly line operator and a forklift driver.

The employees at the Automotive Division plant were represented by UAW Local 174. The union first negotiated a pension for the Automotive Division employees in 1955. Over the years, the union was able to negotiate various improvements in the pension benefits. In particular, between 1976 and 1980, there were a number of

improvements in the basic benefit levels for both past and future retirees. Workers were also given the right to retire after 30 years of service, regardless of age, without any reduction in their basic benefit and to receive an early retirement supplement until they became eligible for Social Security.

From 1965 until the plant finally closed in 1980, I served as the chairperson of the union's pension committee. In this capacity, I was responsible for helping to process all retirement applications and advising workers on their various retirement benefits. Since the plant closed, I have continued to stay in touch with most of the Automotive Division retirees.

As a result of the general recession in the automobile industry, Lear Siegler began to lay off most of the Automotive Division's work force in late 1979 and early 1980, until only about 100 workers remained in the plant. Then, in May 1980, they abruptly announced that the Automotive Division was going to be closed. The company proceeded to gradually wind down its operations. It laid off the remaining workers and finally ceased production at the plant in July 1980.

We later found out through litigation that well before Lear Siegler publicly announced that it was going to close the Automotive Division plant the company's pension experts had analyzed whether the pension plan should be frozen or terminated in the event that the plant were to be closed. The pension experts advised the company that if the pension plan was simply frozen it would still be obligated to pay for all of the benefits promised under the plan, but if the plan was terminated, then the company would only have to pay for those benefits that were guaranteed by the PBGC; it would not have to pay for any nonguaranteed benefits such as the early retirement supplements and part of the benefit improvements made within a few years of the plan termination.

The pension experts calculated that Lear Siegler could save a total of $2.4 million by terminating the pension plan and avoiding any responsibility to pay for those benefits.

Not surprisingly, Lear Siegler decided to terminate the pension plan and to save the $2.4 million. In April 1980, without consulting the union, and even before it announced that the Automotive Division plant was going to be closed, Lear Siegler used all of the assets in the pension plan to purchase annuities that would only provide participants with a level of benefits that would be guaranteed by the PBGC. By taking this step, Lear Siegler effectively committed itself to terminating the pension plan and thus made futile all bargaining over the issue.

When Lear Siegler actually implemented the termination of the pension plan in November 1980, the benefits were cut back to the level guaranteed by the PBGC. As a result, 667 out of 839 retirees had their benefits reduced. In addition, most of the active workers who had recently terminated employment with vested pension rights but who had not yet retired also had their future benefit entitlements reduced.

There were a number of retirees who had over 40 years of service with Lear Siegler who wound up losing substantial portions of their pension benefits. For example, one retiree had worked 44.7

years for the company only to see his monthly pension benefit cut back from $536 to $462.

We also had a number of cases in which a husband and wife had both worked in the Automotive Division plant and both of them wound up losing part of their pension benefits. For example, one couple had 35.7 and 30.4 years of service with the company, respectively. The wife completely lost her early retirement supplement amounting to $221 per month and also had her basic pension benefit reduced from $419 to $365 a month. The husband also lost a small portion of his basic pension benefit.

Another couple had 41.3 and 33 years of service, respectively. The husband had his basic benefit reduced from $458 to $402 per month. The wife lost all of her early retirement supplement of $204 per month and also had her basic pension benefit reduced from $396 to $226 per month.

A third couple worked 31.7 and 21.1 years for the company. The husband lost all of his early retirement supplement of $269 per month, and he had his basic pension benefit reduced from $380 to $210 per month. The wife also lost a small part of her deferred vested pension benefit.

The persons who had retired under the 30-and-out early retirement provisions of our pension plan suffered the biggest loss of pension benefits. They not only lost all of the early retirement supplements that were supposed to be paid until they became eligible for Social Security. They also lost a substantial portion of their basic pension benefits that were supposed to be payable for life.

Persons who retired under the normal or disability retirement provisions of the pension plan also suffered substantial losses in their pension benefits, and many of the active workers who had vested pension rights also saw their future benefit entitlements reduced.

In my own case, although I had almost 30 years of credited service when I finally retired in January 1982, my deferred vested pension benefit was cut back to $247.50 a month.

In addition to the loss of pension benefits, all of the retirees also lost their health insurance and life insurance coverage. This was particularly devastating for those retirees who had not yet qualified for Medicare.

Since the Automotive Division plant was closed, Lear Siegler has continued to be a highly profitable corporation. In its fiscal years from 1980 through 1984, Lear Siegler's annual sales ranged from $1.432 to $1.942 billion, and its net after-tax profits ranged from $64 to $85 million per year.

For the first three quarters of fiscal year 1985, Lear Siegler has had annual sales of $1.736 billion and net after-tax profits of $66 million. In its most recent annual report, Lear Siegler even boasts about the fact that it has been profitable every year for the last 30 years.

I feel that it's unfair that the retirees and the active workers who put in long years of hard work for the company should have their pension benefits which they had earned and which had been promised under the company's pension plan drastically reduced upon the termination of the plan while, at the same time, Lear Siegler continued to earn huge profits. It seems to me that compa-

nies like Lear Siegler should not be able to walk away from their responsibility to pay for all of the pension benefits which are promised under the pension plan.

Since the Automotive Division plant was closed and the pension plan and health insurance were terminated, many of the participants have had a hard time making ends meet. Many have had to use up all of the savings which they had accumulated over a lifetime. Some have even had to go into debt because of medical expenses. Some have been forced to sell their homes where they had lived for many years because they couldn't afford to keep up the payments any more. Most of the participants have experienced a reduction in their standard of living.

I know that the retirees relied on the fact that they would be getting the promised pension and health insurance benefits when they made the decision to retire. Now that some of the benefits that they counted on have been taken away, they have had to forgo many of the simple pleasures that they had looked forward to in retirement.

I believe that the loss of the pension and health insurance benefits has caused many of the participants to suffer additional health problems. The loss of these benefits was a great shock, and the anxiety over the whole situation put a terrible strain on many people. I know of one person who committed suicide because of his despair over the pension situation.

I understand that Congress is now considering legislation that would prevent the Lear Siegler type of situation from occurring again by requiring that profitable companies pay for all of the pension benefits which they have promised and which have been earned by the participants. This only seems fair to me.

I hope this law can be passed soon so that other people won't have to suffer the same type of experience that we have had.

Thank you.

[The prepared statement of Mary Belcher follows:]

PREPARED STATEMENT OF MARY BELCHER

My name is Mary Belcher, I live in Livonia, Michigan, I used to work at the Lear Siegler Automotive Division plant in Detroit, Michigan. Lear Siegler is a multinational corporation with 51 operating divisions, 200 product lines, and over 30,000 employees. The Automotive Division plant in Detroit used to produce parts for the automobile industry. At its peak, it employed 2500 workers.

I began work at the Automotive Division plant in 1948, and continued working there for 32 years until the plant closed in 1980. During that period of time, I worked as an assembly line operator and forklift driver.

The employees at the Automotive Division plant were represented by UAW Local 174. I served as the unit recording secretary and financial secretary for our Local Union, and was also a member of our unit's bargaining committee.

The Union first negotiated a pension plan for the Automotive Division employees in 1955. Over the years, the Union was able to nogotiate various improvements in the pension benefits. In particular, between 1976 and 1980, there were a number of improvements in the basic benefits levels for both past and future retirees. Workers were also given the right to retire after 30 years of service, regardless of age, without any reduction in their basic benefit, and to receive an early retirement supplement until they became eligible for Social Security.

From 1965 until the plant finally closed in 1980, I served as the chairperson of the Union's pension committee. In this capacity, I was responsible for helping to process all retirement applications and advising workers on their various retirement benefits. Since the plant closed, I have continued to stay in touch with most of the Automotive Division retirees.

As a result of the general recession in the automobile industry, Lear Siegler began to lay off most of the Automotive Division's workforce in late 1979 and early 1980, until only about 100 workers remained in the plant. The Union kept asking the company if they have any plans to close the plant, so that we would be in a position to talk about possible adjustments in our contract if that was needed in order to save the plant. Lear Siegler kept telling us that there were no plans to close the factory. Then in May, 1980, they abruptly announced that the Automotive Division was going to be closed. When we asked whether there was anything that could be done to keep the plant open, they told us that their decision was irrevocable. The company then proceeded to gradually wind down its operations. It laid off the remaining workers and finally ceased production at the plant in July, 1980.

During this period, the Union tried to bargain with the company about the effects of the plant closing on the workers and retirees. We were particularly concerned about what was going to happen to our pensions and health insurance coverage. We tried to convince Lear Siegler to "freeze" the pension plan, instead of terminating it, so that participants would continue to receive all benefits promised under the plan. We also took the position that the company was obligated to continue the health insurance coverage for all retirees. However, Lear Siegler adamantly refused to consider either of these points. It went ahead and terminated the pension plan and retiree health insurance coverage in November, 1980.

We later found out through litigation that well before Lear Siegler publically announced that it was going to close the Automotive Division plant, the company's pension experts had analyzed whether the pension plan should be "frozen" or terminated in the event the plant were to be closed. The pension experts advised the company that if the pension plan was simply "frozen", it would still be obligated to pay for all of the benefits promised under the plan. But if the plan was terminated, then the company would only have to pay for those benefits that were guaranteed by the PBGC; it would not have to pay for any non-guaranteed benefits, such as the early retirement supplements and part of the benefit improvements made within a few years of the plan termination. The pension experts calculated that Lear Siegler could "save" a total of $2.4 million by terminating the pension plan, and avoiding any responsibility to pay for those benefits.

Not surprisingly, Lear Siegler decided to terminate the pension plan, and to "save" this $2.4 million. In April, 1980—without consulting the Union, and even before it had announced that the Automotive Division plant was going to be closed—Lear Siegler used all of the assets in the pension plan to purchase annuities that would only provide participants with the level of benefits that would be guaranteed by the PBGC. By taking this step, Lear Siegler effectively committed itself to terminating the pension plan, and thus made futile all of the subsequent bargaining over this issue. Indeed, when we later tried to bargain over the status of the pension plan, the company told us that they had already "terminated" the plan, and that there was nothing left to talk about.

When Lear Siegler actually implemented the termination of the pension plan in November, 1980, the benefits were cut back to the level guaranteed by the PBGC. As a result, 667 out of 839 retirees had their benefits reduced. In addition, most of the active workers who had recently terminated employment with vested pension rights, but who had not yet retired, also had their future benefit entitlements reduced.

There were a number of retirees who had over 40 years of service with Lear Siegler who wound up losing substantial portions of their pension benefits. For example, one retiree had worked 44.7 years for the company, only to see his monthly pension benefit cut back from $536.40 to $462.30.

We also had a number of cases in which a husband and wife had both worked in the Automotive Division plant, and both of them wound up losing part of their pension benefits. For example, one couple had 35.7 and 30.4 years of service with the company respectively. The wife completely lost her early retirement supplement amounting to $221.60 per month, and also had her basic pension benefit reduced from $419.83 to $365 per month. The husband also lost a small portion of his basic pension benefit.

Another couple had 41.3 and 33 years of service respectively. The husband had his basic benefit reduced from $458.43 to $402.03 per month. The wife lost all of her early retirement supplement of $204 per month, and also had her basic pension benefit reduced from $396 to $226.84 per month.

A third couple worked 31.7 and 21.1 years for the company. The husband lost all of his early retirement supplement of $269.60 per month, and had his basic pension benefit reduced from $380.40 to $210.71 per month. The wife also lost a small part of her deferred vested pension benefit.

The persons who had retired under the 30-and-out early retirement provisions of our pension plan suffered the biggest loss of pension benefits. They not only lost all of the early retirement supplements that were supposed to be paid until they became eligible for Social Security; they also lost a substantial portion of their basic pension benefits that were supposed to be payable for life.

Persons who retired under the normal or disability retirement provisions of the pension plan also suffered substantial losses in their pension benefits. And many of the active workers who had vested pension rights also saw their future benefit entitlements reduced. In my own case, although I had almost thirty years of credited service, when I finally retired in January, 1982, my deferred vested pension benefit was cut back to $247.50.

In addition to the loss of pension benefits, all of the retirees also lost their health and life insurance coverage. This was particularly devastating for those retirees who had not yet qualified for Medicare.

The Union filed several lawsuits and unfair labor practice charges against Lear Siegler in connection with the plant closing. After considerable time had passed, we finally got a ruling from an NLRB Administrative Law Judge that Lear Siegler had violated the National Labor Relations Act by failing to bargain in good faith about the status of the pension plan. A federal district court judge also ruled that our lawsuits over the pension and retiree health insurance benefits raised sufficient issues to warrant a trial. Faced with these adverse decisions, Lear Siegler decided to settle the entire case. We eventually worked out a comprehensive settlement agreement with Lear Siegler under which the company agreed to purchase additional annuities to make up a portion of the lost pension benefits, and to make lump sum payments to the retirees in lieu of continuing their health insurance coverage. Although this settlement agreement only made up for a small portion of the benefits that had been lost, the workers and retirees voted to accept it because they needed some immediate relief. The only alternative would have been to pursue the litigation, which would have dragged on for a long time, with no guarantee that we would get any relief in the end.

I am grateful for the efforts of the Union on our behalf in bringing the litigation which ultimately forced Lear Siegler to partially restore our pension benefits. But I don't think that such litigation represents a solution to the type of problem that we faced when our pension plan was terminated. Nothing can ever fully compensate the workers and retirees for the anguish which they suffered as a result of the uncertainty over the pension situation. Also, it took too long to get relief from the courts and the NLRB, and in the end we were only able to force the company to restore part of our lost benefits. Finally, without the Union it would have been very difficult for the workers and retirees to take on a powerful company like Lear Siegler in litigation. Something needs to be done, therefore, to help protect the legitimate pension expectations of all workers and retirees, regardless of whether they are lucky enough to be represented by a labor union.

Since the Automotive Division plant was closed, Lear Siegler has continued to be a highly profitable corporation. In its fiscal years from 1980 through 1984, Lear Siegler's annual sales ranged from $1.432 to $1.942 billion; and its net after-tax profits ranged from $64 to $85 million per year. For the first three quarters of fiscal year 1985, Lear Siegler has had annual sales of $1.736 billion and net after-tax profits of $66 million. In its most recent annual report, Lear Siegler even boasts about the fact that it has been profitable every year for the last 30 years.

I feel that it is unfair that the retirees and active workers who put in long years of hard work for the company should have the pension benefits which they had earned and which had been promised under the company's pension plan drastically reduced upon the termination of the plan, while at the same time Lear Siegler continued to earn huge profits. It seems to me that companies like Lear Siegler should not be able to walk away from their responsibility to pay for all of the pension benefits which are promised under their pension plan.

There never was any question that Lear Siegler could afford to pay for the "non-guaranteed" pension benefits that were promised to participants under its pension plan. And there was never any question that the participants had satisfied all of the conditions required under the plan in order to be entitled to these benefits. And yet Lear Siegler was somehow able to avoid any responsibility for these benefits. The end result was that Lear Siegler was able to pocket an additional $2.4 million, at the expense of the workers and retirees. It seems to me that the rights of the retirees and active workers to receive the pension benefits which they had earned should take precedence over Lear Siegler's profit margin.

Since the Automotive Division plant was closed and the pension plan and health insurance coverage were terminated, many of the participants have had a hard time

making ends meet. Many have had to use up all of the savings which they had accumulated over a lifetime; some have even had to go into debt because of medical expenses. Some have been forced to sell their homes where they had lived for many years because they couldn't afford to keep up the payments any more.

Most of the participants have experienced a reduction in their standard of living. I know that the retirees relied on the fact that they would be getting the promised pension and health insurance benefits when they made the decision to retire. Now that some of the benefits that they counted on have been taken away, they have had to forego many of the simple pleasures that they had looked forward to in retirement.

I believe that the loss of the pension and health insurance benefits has caused many of the participants to suffer additional health problems. The loss of these benefits was a great shock, and the anxiety over the whole situation put a terrible strain on many people. I know of one person who committed suicide because of despair over the pension situation.

I understand that Congress is now considering legislation that would prevent the Lear Siegler type of situation from occurring again, by requiring that profitable companies pay for all of the pension benefits which they have promised and which have been earned by participants. This only seems fair to me. I hope this law can be passed soon, so that other people won't have to suffer the same type of experience that we have had. Thank you.

Mr. CLAY. Thank you.

Mr. Putman.

Mr. PUTMAN. My name is Earlie Putman, Jr. I am 57 years old. My wife and I currently reside in Caruthersville, MO.

I went to work for the Federal Division of Federal Forge in Lansing, MI, on October 30, 1950. I continued to work there for 31 years until I finally retired on March 30, 1981. During my 31 years of service, I worked as a floorworker, a heater, hammerman, and in maintenance.

The Federal Division of Federal Forge employed about 185 workers and produced drop forgings. In 1966, Federal Forge was acquired by Walco National, a diversified manufacturing conglomerate headquartered in New York with 6 operating companies and 19 plants in 10 different States.

The union negotiated a pension plan for the employees at the Federal Division plant in 1950, the year I began to work for the company. Over the years, we negotiated various improvements in the pension plan. In the contract that we negotiated with Federal Forge in 1980, we won the right to retire with an unreduced pension after 30 years of service with the company, regardless of age—the so-called 30-and-out pension benefit. We also negotiated increases in the amount of the early retirement supplements that are payable until a retiree becomes eligible for Social Security and increases in the basic monthly pension benefits for both past and future retirees.

I decided to retire in 1981 because my health had not been good for some time and I felt that I could no longer do the heavy work in the plant. My appendix burst in 1973, and I had to be hospitalized every year since then because of complications. I also had been having back problems due to the heavy nature of the work. Since I had already put in the 30 years of service with the company, I concluded that I could afford to retire with a modest standard of living under the 30-and-out early retirement provision that we had negotiated in 1980.

My understanding at the time that I retired was that I would be receiving a pension benefit of $897.47 each month until I became

eligible for Social Security at age 62 and that thereafter I would be receiving a monthly benefit of $522.97 for the rest of my life. I thought the company was obligated to pay these benefits no matter what, because I had put in the necessary years of service and satisfied all the eligibility criteria under the pension plan to establish my right to those benefits before I retired. In making the decision to retire, I relied on the fact that I would be getting those benefits, as promised under the terms of the pension plan.

Due to the recession, the Federal Division began to lay off workers at the beginning of 1982 until there were only about 75 to 80 employees left in the plant. Then, in November 1982, the company suddenly announced that it was permanently closing most of the Federal Division.

The company terminated the pension plan in April 1983, and contributed additional money to the pension plan to cover the benefits that were guaranteed by the Pension Benefit Guaranty Corporation [PBGC] and then turned the plan over to the PBGC.

When the PBGC took over the plan, it determined that not all of the benefits would be guaranteed by the Government. In particular, some of the benefit improvements that we negotiated in 1980 were not guaranteed, including part of the early retirement supplements and the increases in the basic benefit levels. As a result, the PBGC wound up reducing the benefits for almost all of the participants in the pension plan, including those persons who had retired and were already receiving benefits under the plan as well as those persons who had vested rights and were entitled to receive benefits in the future.

In my case, my current monthly pension benefit was cut back from $897.47 to $626.41, and I was told that my monthly benefit after age 62 would be reduced from $522.97 to $365.02.

Almost all of the 67 persons who had already retired under the pension plan had their benefits reduced. Those retirees had long periods of service with the company, and, in some cases, they had been loyal workers for over 40 years. The persons who had retired under the 30-and-out early retirement provisions, like myself, suffered the biggest reductions in their benefits, but the persons who had retired under other provisions of the plan also suffered substantial losses. Most of the active workers who had not yet retired but had vested rights under the pension plan also had their future benefit entitlements reduced.

Despite the closing of the Federal Division plant, Walco National still continues to do business and is a highly profitable corporation. In fiscal year 1984, it reported sales of $165.9 million and after-tax profits of $5.8 million. For the first three quarters of fiscal year 1985, it reported sales of $132.6 million and after-tax profits of $3.8 million.

I believe it is simply unfair that the retirees and workers who had put long years of service in the Federal Division plant ended up losing a substantial portion of their pension benefits which they had earned and on which they were relying while, at the same time, Walco National Corp. has continued to do business and is earning a profit.

I'm not an expert on the pension laws, but it seems to me that something is wrong when a profitable company can simply walk

away from its responsibility to pay for pension benefits that have been earned by workers under its pension plan.

I've had a hard time since the plant closed and my pension benefits were reduced. It was a real shock to both my wife and myself when we learned that part of the pension benefits we were counting on were going to be taken away. I had a slight heart attack in November of last year, and I have taken medication for a nervous condition. I believe those problems were caused partly by the stress and anxiety over the pension situation.

My wife and I had to cut back on the way in which we live because of the reduction in my pension. We are not poor now, but we certainly are not able to enjoy the same standard of living that we had counted on. I have also had to use up most of my savings. This just doesn't seem fair to me.

I hope Congress can do something to reform the pension laws so that profitable companies like Walco National Corp. are required to honor the pension promises that they have made and so that workers and retirees like myself don't have to wind up losing part of the pension benefits that they have earned.

Thank you.

[The prepared statement of Earlie Putman follows:]

PREPARED STATEMENT OF EARLIE PUTMAN, JR.

My name is Earlie Putman, Jr. I am 57 years old. My wife and I currently reside in Caruthersville, Missouri.

I went to work for the Federal Division of Federal Forge, Inc. in Lansing, Michigan on October 30, 1950. I continued to work there for 31 years, until I finally retired on March 30, 1981. During my 31 years of service, I worked as a floorworker, heater, hammerman, and in maintenance. I also served as a committeeman for UAW Local 724 which represented the employees at the Federal Division plant.

The Federal Division of Federal Forge employed about 185 workers, and produced "drop forgings" which were used by the automobile, aerospace and agricultural implement industries. In 1966, Federal Forge was acquired by Walco National Corp., a diversified manufacturing conglomerate headquartered in New York with 6 operating companies and 19 plants in 10 different states.

The Union negotiated a pension plan for the employees at the Federal Division plant in 1950, the year I began working for the company. Over the years, we negotiated various improvements in the pension plan. In the contract that we negotiated with Federal Forge in 1980, we won the right to retire with an unreduced pension after 30 years of service with the company, regardless of age (a so-called "30-and-out" pension benefit); we also negotiated increases in the amount of the early retirement supplements that are payable until a retiree becomes eligible for Social Security (i.e., age 62), and increases in the basic monthly pension benefit for both past and future retirees.

I decided to retire in 1981 because my health had not been good for some time, and I felt that I could no longer do the heavy work in the plant. My appendix burst in 1973 and I had to be hospitalized every year since then because of complications (peritonitis and gangrene). I also had been having back problems due to the heavy nature of the work. Since I had already put in over 30 years of service with the company, I calculated that I could afford to retire with a modest standard of living under the "30-and-out" early retirement provision that we had negotiated in 1980.

My understanding at the time I retired was that I would be receiving a pension benefit of $897.47 each month until I became eligible for Social Security at age 62, and that thereafter I would be receiving a monthly benefit of $522.97 for the rest of my life. I thought that the company would be obligated to pay these benefits no matter what, because I had put in the necessary years of serivce and satisfied all of the eligibility criteria under the pension plan to establish my right to these benefits before I retired. In making the decision to retire, I relied on the fact that I would be getting these benefits, as promised under the terms of our pension plan.

Due to the recession, the Federal Division began to lay off workers at the beginning of 1982, until there were only about 75–80 employees left in the plant. Then, in

November, 1982, the company suddenly announced that it was permanently closing most of the Federal Division. Although the company continued to operate a small part on the plant with 12–13 employees, it finally shut that down in April, 1984.

The company and the Union entered into shutdown negotiations in 1982 but were not able to reach any agreement in connection with the plant closing. The company eventually went ahead and terminated the pension plan in April, 1983. It contributed additional money to the pension plan to cover those benefits that were guaranteed by the Pension Benefit Guaranty Corporation (PBGC) and then turned the plan over to the PBGC.

When the PBGC took over the plan, it determined that not all of the benefits would be guaranteed by the government. In particular, some of the benefit improvements that we had negotiated in 1980 were not guaranteed, including part of the early retirement supplements and the increases in the basic benefit levels. As a result, the PBGC wound up reducing the benefits for almost all of the participants in the pension plan—including those persons who had retired and were already receiving benefits under the plan, as well as those persons who had vested rights and were entitled to receive benefits in the future.

In my own case, my current monthly pension benefit was cut back from $897.47 to $626.41. And I was told that my monthly benefit after age 62 will be reduced from $522.97 to $365.02.

Almost all of the 67 persons who had already retired under the pension plan had their benefits reduced. These retirees had long periods of service with the company; in some cases, they had been loyal workers for over forty years. The persons who had retired under the 30-and-out early retirement provisions, like myself, suffered the biggest reductions in their benefits. But the persons who had retired under other provisions of the plan also suffered substantial losses. Most of the active workers who had not yet retired but who had vested rights under the pension plan also had their future benefit entitlements reduced.

Despite the closing of the Federal Division plant, Walco National Corp. still continues in business and is a highly profitable corporation. In fiscal year 1984, it reported sales of $165.9 million and after-tax profits of $5.8 million. For the first three quarters of fiscal year 1985, it reported sales of $132.6 million and after-tax profits of $3.8 million.

I believe it is simply unfair that the retirees and workers who put in long years of service at the Federal Division plant ended up losing a substantial portion of the pension benefits which they had earned—and on which they were relying—while at the same time Walco National Corp. has continued in business and is earning profits. I am not an expert in the pension laws, but it seems to me that something is wrong when a profitable company can simply walk away from any responsibility to pay for pension benefits that have been earned by workers under its pension plan.

I have had a hard time since the plant closed and my pension benefits were reduced. It was a real shock to both my wife and myself when we learned that part of the benefits we were counting on were going to be taken away. I had a heart attack in November of last year, and I have had to take medication for a nervous condition. I believe these health problems were caused in part by the stress and anxiety over the penison situation.

My wife and I have had to cut back on the way in which we live because of the reduction in my pension. We are not poor now, but we certainly are not able to enjoy the same standard of living that we had counted on. I have also had to use up most of my savings. This just doesn't seem fair to me.

I hope Congress can do something to reform our pension laws, so that profitable companies like Walco National Corp. are required to honor the pension promises that they have made, and so that workers and retirees like myself don't have to wind up losing part of the pension benefits that they have earned.

Mr. CLAY. Thank you.

Mr. Clayman.

Mr. CLAYMAN. Mr. Chairman and members of the committee, I'm pleased to be here with two pensioners and retirees, and I can associate with them because I have seen enough of workers in America to realize over the years that what they have told you is commonplace in our society.

I suspect you may believe that their horrible stories are horror stories indeed, but they are true horror stories. Indeed, they are horrible. This is widespread.

Let me tell you why I'm here and the interest of the National Council of Senior Citizens in legislation of this nature. We represent many senior citizens in our society—poor, near poor, middle class. Indeed, a substantial number of our membership is composed of retirees like these folks—trade union retirees—and because of a past history of union management contracts providing pensions for workers, many of our union workers are recipients of company pensions. We obviously want their interests protected in the present and in the future, and as you multiply the kind of personal cases you have just listened to, I think you'll get the same reaction that I get, sitting here on this side of the table, listening to them.

You see, in too many cases the difference between poverty among the elderly and a better life is the labor-management pension. The plain fact is that Social Security income on its own in most situations spells poverty, P-O-V-E-R-T-Y.

Consider that the average Social Security benefit of a retired worker living alone is $449 a month. The Social Security benefit of a retired couple is $776 per month. This means that those who have to rely totally—and many do—on Social Security are either living in poverty or teetering on the edge of poverty. The additional job-related pension makes all the difference in the world to the people that I know.

In our organization, I've told you, we have poor, near-poor, and middle class. Our middle class, as we use the word loosely, are those trade unionists who have retired and get Social Security plus—plus—their pension. They are our middle class. So the company pension—the labor-management pension—makes life tolerable, makes it livable, makes it decent in our society as we know it, and without it, and if it's placed in jeopardy, then, my friends, they are in trouble.

I have listened to these two troubled cases. I believe every word they say when they tell you and tell us the trauma that is related to the closing of shops and the cutting of their pensions which they came to believe as the staff of their lives when they retired.

The Pension Benefit Guaranty Corporation, as all of you know apparently, is in trouble. It has been underfinanced for years, indeed, is operated with a deficit of close to a half a billion dollars; that's a lot of money, too. There has not been an increase in the contribution of the employers since 1977. You have been told by the chairman that in 1977 they paid $2.60. They still pay $2.60 in 1985. All kinds of industrial water has flowed beneath the bridge in those years. Plant closures have been commonplace, routine. Pick up the paper. Almost every day in some place near or remote another plant is closed, and all of you know the problems of basic industry in America in these troubled times.

Even Congress, the Senate, no great habitat for special virtue—that's not the word; I don't mean that—no great habitat for liberalism—that coexists with virtue, in my secret mind—has determined that it ought to be raised to $7.50. For that institution to include it in their budget is extraordinary. They must suddenly have realized the true nature of the problems of these people sitting beside me.

In the House, as one might expect these days, the House went to $8.50 in its budget. So Congress apparently is in unison. There is a dollar separating them; it shouldn't be; there should be no separa-

tion. The higher figure is the appropriate figure. Indeed, a case might be made that $8.50 isn't quite enough. So perhaps the House is being modest in suggesting only $8.50.

Well, surely the employers must know that they have been getting a bargain basement deal on this—$2.60 per participant per year—and I trust that they will not allege that $7.50 or $8.50 or anything more than that is too much. So H.R. 2812, in our judgment, should be passed.

I quickly want to read a small section from my original testimony. I cannot stress enough the importance of this protection to American workers and the retirees. Senior citizens today are under fire from all sides. Social Security is under virtually continuing attack, and even if no cuts emerge from the 1986 budget conference, we expect to face future attacks on the program. Apparently it has become quite popular to kick senior citizens in the backside these days. Medicare is not what it was once upon a time. Steadily rising health care costs have eroded the medical protection to the point where older workers pay more out of their own pocket today in health care than they did before Medicare was enacted. Isn't that an amazing fact?

We passed Medicare in the first instance because of the enormous costs of health care to individuals, senior citizens, and they paid then about 20 percent of their income on health care, and today, with Medicare—with Medicare—it's a little more than 20 percent now that they pay out of pocket, and still the story goes around, let's cut Medicare more, we've got to cut more.

Well, I mustn't dwell here too long.

We have not found humane answers to the termination of pensions for workers. There are legal answers but no humane answers. We have not found answers to the problems of corporate bankruptcies. We have not found answers yet to corporations making profits, and here we have these two workers—former workers who are able to cite actual specifics, millions of dollars of profits, and yet not one penny more to take care of those who have had their pensions cut.

Lawyers have succeeded in finding ways and means of watering down or destroying the rights of workers who have worked a lifetime to earn their pensions. We have not yet found a way to thwart those employers who have found ways to use loopholes in ERISA to bilk the workers out of their justly due pensions.

In short, Mr. Chairman and members of the committee, there is much to be done, and though I haven't spoken specifically about two of the bills because I am too far removed now from my intimate knowledge of the mechanics of the bills to attempt to sound as though I know what I am talking about, but there are others here who will talk about those things. So I hope, as Congressmen of good faith and as humans of good faith, that you will do what is necessary to prevent the recurrence of the kind of situations you listened to before I testified.

[The prepared statement of Jacob Clayman follows:]

PREPARED STATEMENT OF JACOB CLAYMAN, PRESIDENT, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. Chairman, thank you very much for soliciting the views of the National Council of Senior Citizens on issues related to single-employer pension reform legislation. NCSC is a nonprofit, membership organization representing some four million senior citizens across the fifty states. Because many of our members are retired labor union members, as well as retired workers, they are fortunate enough to have some pension income in addition to Social Security benefits. It is, in part, because such great trade unions as the United Auto Workers continue to bargain for retirees long after they retire, that many workers believe they can retire with some measure of security and protection.

But who can forget the tragedies of the past when large companies would go bankrupt and, overnight, workers and retirees would lose their pension protection. In an effort to respond to the problem of unfunded pension liabilities and to provide greater protection for workers and retirees, Congress, in 1974, enacted ERISA, the Employment Retirement Income Security Act. ERISA authorized the establishment of the Pension Benefit Guaranty Corporation (PBGC) to step in, under certain circumstances, and "back up" a terminated pension plan. PBGC benefits are supposed to be provided when a pension plan is terminated with inadequate funds to pay current and future obligations.

I cannot stress enough the importance of this protection to America's workers and her retirees. Senior citizens today are under fire from all sides. Social Security is under virtually continuing attack, and even if no cuts emerge from the FY 1986 Budget Conference, we expect to face future attacks on the program. Medicare is not what it once was either. Steadily rising health care costs have eroded Medicare protection to the point where older people pay more out of their own pockets today for health care than they did before Medicare was enacted.

And, today, we are here talking about workers and retirees who may not get the private pension income they expect and deserve. Mr. Chairman, how can a man or woman age 54 or 55 know what to do? Once they retire, they cannot easily go back to work. Their income, in fact, the quality of the rest of their lives will be based on that retirement decision. Yet, there is no surety that the company they worked for will honor its pension commitments. Others here today will talk in detail about the ways some corporations evade the ERISA law and get out from under their legitimate pension obligations—even when such companies are completely solvent. I want to confine my remarks to the issue of the increasing financial distress of the Pension Benefit Guaranty Corporation.

There is an obvious and direct relationship between the number of company pension plan terminations and the overall state of the economy. Periods of low growth, low profits and high unemployment lead to increased, unfunded pension liability. Thus, the PBGC has been required to step in and, at least, partially bail out several terminated pension plans over the last several years. Had it not been for the resources of the PBGC, countless thousands of workers and retirees would have been left with dramatically reduced retirement pensions.

Funding for the PBGC comes from premiums paid by single-employer pension plans as a kind of insurance against unanticipated economic setbacks and the inability to pay current and future pension commitments. Yet these premiums have not been raised since 1977 resulting in serious financial pressures being placed on the PBGC. Currently the Corporation is running a substantial deficit, leading us to question its ability to continue meeting its commitments.

Therefore, the National Council of Senior Citizens strongly supports the Clay-Roukema Premium Increase Legislation, H.R. 2812. This legislation imposes a long, overdue premium increase on single-employer pension plans, bringing them up to $8.50 per participant, per year. In this way, the PBGC will be assured of enough funds to eliminate its deficit and provide pension protection for millions of past, current and future workers.

Mr. Chairman, the National Council of Senior Citizens also endorses H.R. 2811 and H.R. 2813, bills you have introduced with Representative Marge Roukema making other essential changes in the pension plan termination and insurance program.

Too many profitable corporations have found and used loopholes in ERISA, enabling them to "dump" their unfunded pension liabilities, leaving the PBGC and the workers and retirees "holding the bag." We think this practice is outrageous and we urge this Committee to move quickly to remedy this and other employer abuses of the pension plan termination insurance program.

When a worker retires, he or she does so trusting that Social Security and pension benefits will be adequate to provide a comfortable retirement. Today, that trust is in jeopardy. People are afraid to make retirement plans without knowing for sure what income they will have once they retire.

We must move to restore that trust by enacting your legislation, Mr. Chairman, and by protecting the Social Security program from attack in the future.

Mr. CLAY. Thank you.

Mr. Putman, you are absolutely right when you say that something is wrong when a profitable company can simply walk away from any responsibility to pay for pension benefits that have been earned by workers under its plan. The only reason that they could do that is because the law permitted it.

Something is basically wrong with a law that would permit companies making profits to the extent that the company you worked for, Walco, and the company that Mrs. Belcher worked for—to permit such indecent acts against their workers. That's the purpose of this law. Hopefully, we will do what Mr. Clayman just suggested and make sure that nobody in the future will be able to be hurt as you have been hurt in the past.

I have no questions, but I certainly want to thank you for your testimony.

Mrs. Roukema.

Mrs. ROUKEMA. Mr. Chairman, I join in with you in commending these witnesses here today.

Of course, the legislation that the chairman and I are cosponsoring is designed to deal directly with the kinds of problems that you encountered. This should not be permitted under the law, and hopefully we will be successful in the very near future in correcting these loopholes.

Thank you.

Mr. CLAY. Mr. Kildee.

Mr. KILDEE. I just want to thank the witnesses for presenting in a very real and personal way the problem we are trying to solve with this bill. My only regret is that the bill is only prospective, because some people have really been hurt by companies folding their pension plans. I wish we could reach back and help those who have been hurt.

You certainly have presented this in a very real and a very personal way, and I appreciate that.

Mr. CLAY. Mr. Chandler.

Mr. CHANDLER. I have no questions, Mr. Chairman.

Mr. CLAY. Mr. Atkins.

Mr. ATKINS. No questions.

Mr. CLAY. Mr. Fawell.

Mr. FAWELL. I have no questions, Mr. Chairman.

Mr. CLAY. Mr. Owens.

Mr. OWENS. I have no questions, Mr. Chairman.

Mr. CLAY. We want to thank you for your testimony.

The next witnesses will consist of a panel: Messrs. David Vance, Richard Prosten, Alan Reuther, and S. Howard Kline.

Without objection, your entire statements will be entered in the record, and I will not only ask you to be brief in your presentations, I will insist on your being brief, because we have got to go to

a Senate-House conference shortly. So you may proceed as you see fit. The entire statement will be in the record. I'm asking you not to read these entire statements.

Mr. Vance.

STATEMENTS OF DAVID VANCE, DIRECTOR, RETIREMENT AND INSURANCE DEPARTMENT, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY ELIZABETH KOBY, BENEFITS ATTORNEY; RICHARD M. PROSTEN, DIRECTOR OF RESEARCH, INDUSTRIAL UNION DEPARTMENT, AFL-CIO; ALAN REUTHER, ASSOCIATE GENERAL COUNSEL, UNITED AUTOMOBILE WORKERS OF AMERICA, ACCOMPANIED BY GAY HAYNIE, UAW ACTUARIAL CONSULTANT; AND S. HOWARD KLINE, COUNSEL FOR EMPLOYEE BENEFITS, UNITED STEEL WORKERS OF AMERICA, REPRESENTING LYNN WILLIAMS, PRESIDENT

Mr. VANCE. Yes, Mr. Chairman. Captain Duffy regrets not being able to be here today. He was pressed into sensitive negotiations last night which continue this morning.

My name is David Vance, director of the retirement and insurance department of ALPA, and with me is Elizabeth Koby, benefits attorney. I am testifying today on behalf of the 34,000 ALPA members who fly for 49 airlines. We appreciate the opportunity to appear before you today and to address our concerns on the security of employee pension benefits.

Mr. Chairman, I would like to commend you and this subcommittee on your continuing and exhaustive efforts to develop legislation designed to increase the security employees have in their employers' private pension plans and to strengthen the ability of the Pension Benefit Guaranty Corporation to provide the benefits employees have earned in the event that such private pension plans fail.

Pension benefit security is a very real problem for ALPA's members. In just the past 3 years, our members have been involved in the termination of six defined benefit plans and the freezing of accruals in three others. These plans covered over 10,000 pilots, representing about one-third of our total membership.

The failure of a pension plan can be dealt with in terms of prevention and salvage. To prevent plan failures, greater emphasis must be placed on the enforcement of the minimum funding standards established by ERISA over a decade ago. To make the most in salvaging a plan failure, the plan termination process must be tightened up and the viability of the PBGC must be preserved.

We emphasize prevention as the best medicine on the basis of our experience with a termination of the pension plan covering Braniff pilots and the freeze on benefit accruals in the pension plan covering Pan American pilots.

Braniff Airways filed for bankruptcy on May 12, 1982. The pilots' pension plan was terminated effective August 30, 1982. Ultimately, the accrued pension benefits of Braniff pilots were cut in some cases by as much as 50 percent due to severe underfunding in the plan. The plan would not have been so poorly funded had the Internal Revenue Service not granted it a waiver of ERISA's minimum funding standards.

Under present law, a funding waiver is granted on the premise that the amount waived will be paid into the plan over a period of amortization not to exceed 15 years. Usually the IRS grants the full 15 years. If the plan terminates during the amortization period, the plan obviously will be deficient. The result is more pronounced if the termination occurs shortly after a waiver is granted, and it is drastic if the termination occurs shortly after the grant of several successive waivers.

Unfortunately, the PBGC could not come to the rescue of the pilots of Braniff for several reasons. One is that in some cases the PBGC did not cover the type of benefit provided such as a portion of the subsidized early retirement benefits. Another reason is that some of the benefits are not insured by the PBGC.

For pilots, the guaranteed amount is less than the amount guaranteed to other employees. As you know, pilots are mandated by law to retire at age 60. At this age, title IV of ERISA reduces the maximum guaranteed amount by approximately 35 percent. Thus, for pilots, the amount guaranteed is only 65 percent of the amount guaranteed for other employees.

As a footnote, I would point out, since Braniff has come out of bankruptcy reorganization the pilots still do not have a pension plan.

A particularly difficult situation has developed at Pan American. As of January 1, 1984, the pilots of Pan American, as well as all of the other employees of Pan Am who are covered by Pan Am's several defined benefit plans, no longer earn additional credited service toward an adequate retirement income. This freeze on pension accruals came about when the Internal Revenue Service granted the latest funding waiver to the plan. Waivers had been granted for the years 1980, 1981, and 1982. The company has asked the IRS for a funding waiver for 1983, but because ALPA is not a party to the waiver process, as I shall further explain, we do not yet know the outcome. We also do not know whether a waiver application has been filed for 1984.

According to the past practice of the IRS, a second waiver is more difficult to obtain than the first, a third is more difficult to obtain than the second, and so forth.

As a condition to granting the third waiver to Pan Am, the IRS required a freeze on pension accruals effective January 1, 1984. Pan Am initially tried to evade its collective bargaining responsibilities and amend the plan unilaterally to impose the freeze in accordance with the IRS condition. Some time later, the amendment was collectively bargained, but this problem may not have arisen had the union, the participants, and beneficiaries, and other interested parties received notice and an opportunity to present meaningful comments to the IRS on Pan Am's pending request for a funding waiver.

Notice and an opportunity to comment constitute the fundamental requirements of due process. Under current law, an employer can apply for and receive a funding waiver from the IRS without notifying affected individuals and organizations. Indeed, we learned that Pan Am had applied for a third funding waiver on the pilots' plan at a time when we scarcely were aware that funding waivers had been granted for the previous 2 years. This represents a seri-

ous conflict between the Internal Revenue Code and the national policy fostering smooth labor-management relations. For this reason, ALPA heartily supports the provision in this bill requiring that interested parties be given notice of the filing of a request for a funding waiver and the opportunity to comment to the IRS. However, we have further recommendations which we hope the subcommittee will consider.

First of all, specific procedures should be provided both for notifying interested parties of their right to comment and for actually presenting comments.

Second, in the case of a collectively bargained plan, the union should be recognized as a party to the proceeding, since the plan which is the subject of the proceeding is established and maintained by joint agreement of the employer and the union.

Thus, the union should be able to participate on an equal basis in the proceeding, receiving any and all documents filed with the IRS and transmitted by the IRS in connection with the filing, including the opportunity to support the sponsor's waiver application if the situation warrants. Furthermore, any decision of the IRS on a waiver application should be subject to a full and fair review by a court of competent jurisdiction.

Mr. Clay. The time of the gentleman has expired.

[The prepared statement of Captain Duffy follows:]

PREPARED STATEMENT OF CAPT. HENRY A. DUFFY, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Good morning, Mr. Chairman, and members of the Subcommittee. I am Captain Henry Duffy, President of the Air Line Pilots Association. Accompanying me today are Mr. David R. Vance, Director, and Ms. Elizabeth Koby, Attorney, both of ALPA's Retirement and Insurance Department. I am testifying today on behalf of the 34,000 ALPA members who fly for 49 airlines. We appreciate the opportunity to appear before you today and to address our concerns on the security of employee pension benefits.

Mr. Chairman, I would like to commend you and this Subcommittee on its continuing and exhaustive efforts to develop legislation designed to increase the security employees have in their employers' private pension plans and to strengthen the ability of the Pension Benefit Guaranty Corporation to provide the benefits employees have earned in the event such private pension plans fail. Pension benefit security is a very real problem for ALPA's members. In just the past three years, our members have been involved in the termination of six defined benefit plans and the freezing of accruals in three others. These plans covered over 10,000 pilots, representing about one-third of our total membership.

The failure of a pension plan can be dealt with in terms of prevention and salvage. To prevent plan failures, greater emphasis must be placed on enforcement of the minimum funding standards established by ERISA over a decade ago. To make the most in salvaging a plan failure, the plan termination process must be tightened up and the viability of the PBGC must be preserved.

We emphasize prevention as the best medicine, on the basis of our experience with the termination of the pension plan covering Braniff pilots and the freeze on benefit accruals in the pension plan covering Pan Am pilots.

Braniff Airways filed for bankruptcy on May 12, 1982. The pilots' pension plan was terminated effective August 30, 1982. Ultimately, the accrued pension benefits of Braniff pilots were cut, in most cases by 50%, due to severe underfunding in the plan. The plan would not have been so poorly funded had the Internal Revenue Service not granted it a waiver of ERISA's minimum funding standards.

Under present law, a funding waiver is granted on the premise that the amount waived will be paid into the plan over a period of amortization not to exceed fifteen years. Usually, the IRS grants the full fifteen years. If the plan terminates during the amortization period, the plan obviously will be deficient. The result is more pronounced if the termination occurs shortly after a waiver is granted, and it is drastic if the termination occurs shortly after the grant of several successive waivers.

Unfortunately, the PBGC could not come to the rescue of the pilots at Braniff for several reasons. One is that in some cases, the PBGC did not cover the type of benefit provided, such as a portion of the subsidized early retirement benefits. Another reason is that some of the benefits are not insured by the PBGC. For pilots, the guaranteed amount is not the maximum amount guaranteed to other employees. As you know, pilots are mandated by law to retire at age 60. At this age, Title IV of ERISA reduces the maximum guaranteed amount by approximately 35%. Thus, for pilots, the amount guaranteed is only 65% of the amount guaranteed for other employees. As a footnote, I would point out that, since Braniff has come out of bankruptcy reorganization, the pilots still do not have a pension plan. They have only a profit sharing plan to protect their futures.

A particularly difficult situation has developed at Pan Am. As of January 1, 1984, the pilots of Pan Am, as well as all of the other employees of Pan Am who are covered by Pan Am's several defined benefit plans, no longer earn additional credited service or credited earnings toward an adequate retirement income. This freeze on pension accruals came about when the Internal Revenue Service granted the latest funding waiver to the plan. Waivers have been granted for the years 1980, 1981 and 1982. The Company has asked the IRS for a funding waiver for 1983, but because ALPA is not a party to the waiver process, as I shall further explain, we do not yet know the outcome. We also do not know whether a waiver application has been filed for 1984.

According to past practice of the IRS, a second waiver is more difficult to obtain than the first, a third waiver is more difficult to obtain than the second, and so forth. As a condition to granting the third waiver at Pan Am, the IRS imposed a freeze on pension accruals, effective January 1, 1984. Pan Am initially tried to evade its collective bargaining responsibilities and amend the plan unilaterally to impose the freeze, in accordance with the IRS condition. Sometime later, the amendment was collectively bargained, but this problem would never have arisen had the union, the participants and beneficiaries, and other interested parties received notice and an opportunity to present meaningful comments to the IRS on Pan Am's pending request for a funding waiver. Notice and an opportunity to comment constitute the fundamental requirements of due process.

Under current law, an employer can apply for and receive a funding waiver from the IRS without notifying affected individuals and organizations. Indeed, we learned that Pan Am had applied for a third funding waiver on the pilots' plan at a time when we scarcely were aware that funding waivers had been granted for the two previous plan years. This represents a serious conflict between the Internal Revenue Code and the national policy fostering smooth labor-management relations. For this reason, ALPA heartily supports the provision in the bill requiring that interested parties be given notice of the filing of a request for a funding waiver and the opportunity to comment to the IRS.

However, we have further recommendations which we hope the Subcommittee will consider. First of all, specific procedures should be provided both for notifying interested parties of their right to comment and for actually presenting comments. Secondly, in the case of a collectively bargaining plan, the union should be recognized as a party to the proceeding, since the plan, which is the subject of the proceeding, is established and maintained by joint agreement of the employer and the union. Thus, the union should be able to participate on an equal basis in the proceeding, receiving any and all documents filed with the IRS and transmitted by the IRS in connection with the filing, including the opportunity to support the sponsor's waiver application, if the situation warrants. Furthermore, any decision of the IRS on a waiver application should be subject to a full and fair review by a court of competent jurisdiction.

Another harsh compromise of employer rights is inherent in the funding waiver process. As stated before, when a funding waiver is granted, the amount waived must be paid into the plan over a period of amortization of up to fifteen years. during this fifteen-year period, present law prohibits the plan from being amended to increase benefits or shorten the vesting schedule, without losing the protection of the waiver. Thus, the grant of a waiver, obtained without due process to the employees, operates as a major stumbling block in collective bargaining, on the issue of pension benefits, for the entire period of amortization. Not only does the plan suffer inadequate funding, but the employees are stripped of rights protected by federal labor law. We believe that national policy should favor the solvency of pension plans and the preservation of employee rights over the ability of an employer to unilaterally obtain a funding waiver from the IRS. National labor-relations policy does not support the federal government's award of such bargaining power to the

employer. Providing notice and the opportunity for meaningful comment to interested parties would be a move in the right direction.

In addition, the standards for granting a waiver should be made more strict. The waiver amortization period should be shortened to something more reasonable, say five years. Further, during the period of amortization, the employer should be required to certify annually to the IRS that it continues to meet the conditions it met when it first qualified for the grant of the waiver. In this way, employers will not be permitted to hide behind a funding waiver and claim that it prevents them from bargaining for a period of fifteen years, when in fact, financial conditions may warrant the employer paying off the waiver ahead of time.

As further security to employees when a waiver is granted, ALPA favors the imposition of a lien in favor of the plan. We prefer this to the alternative which would require the plan sponsor to post a bond for a portion of the waived amount. There is no reason why a pension plan should not be able to obtain the protection of a lien, in the same manner as would a prudent creditor when lending large sums of money to the plan sponsor. The imposition of a lien will bring considerable attention to the employer's pension debts, which should stand on ground no less firm than the employer's other debts. Since creditors would think twice before lending further sums to an employer with a funding waiver lien, it is likely that employers would refrain from applying for waivers in the first place, and would treat their pension plan obligations on the high priority level they deserve.

I would now like to address the plan termination reforms in the bill, ALPA fully supports the PBGC premium increase, beginning January 1, 1986. ALPA hopes that the Congress would pass this much-needed increase along with the provisions for the plan termination reform.

In general, ALPA supports the plan termination reforms contained in the bills. We welcome the provision for 90 days' advance notice of a proposed plan termination and the requirement that protects the plan pending the resolution of a related action filed by an affected party during the 90-Day period. The bill provides that during the pendency of such an action, the plan administrator must either suspend the termination or go forward with it, but preserving the ability to undo any actions taken, in the event the termination is later found to violate the affected party's rights. However, the plan administrator's ability to go forward with the termination, while a dispute about the termination is pending, should be limited in certain cases. We believe that suspension of the termination is required in order to accomodate national labor relations policy to the fullest extent possible. Thus, unless it is necessary to protest overriding interest of either the participants or the PBGC in seeing the termination go forward, the termination should be suspended. We understand that the PBGC has, on occasion, given strong endorsement to this policy.

Mr. Chairman, I would now like to focus our attention on your proposal to classify a pension plan termination as either a standard termination or a distress termination. We support the use of the term "benefit entitlements" in the definition of a standard termination, so long as it is clarified to encompass all benefits earned through the date of termination, including those benefits which become vested only by reason of the termination.

With regard to distress terminations, we favor narrowly defining the situations which permit them to go forward. One of the four situations defined in the bill gives us particular concern. A distress termination would be permitted if the sponsor and its related entities can show that they "will each be unable to pay their respective debts when due and will be unable to continue in business" unless the distress termination is permitted. This provision requires the PBGC to predict events which most Wall Street analysts only wish they could predict, and as such, is far too speculative a standard to give rise to a distress termination. Furthermore, such a standard would be very difficult for the PBGC to administer. For these reasons, we believe this alternative for a distress termination should be eliminated.

In the event a distress termination occurs, ALPA strongly supports any measure which gives the PBGC and plan participants any hope for recovery of lost benefits. In particular, we favor the establishment of the two trusts to receive a portion of the profits of the sponsor and its related entities following termination of an insufficient plan. While we would not expect these trusts to recover too much, any recovery would be a blessing. This raises the question of how to keep a company liable for the plan of its former subsidiary, following the company's spinoff of that subsidiary. ALPA supports measures which would impose contingent liability for a limited period, say five or ten years, in every case, and not just in those few cases where the PBGC could prove that a principal purpose of the spinofff was to evade liability under Title IV.

Finally, we applaud the bill's provision which grants the union standing to sue in federal court in order to seek redress of violations of the plan termination process. This recognition of the union's capability and wherewithal to monitor and protect the rights of the persons it represents is long overdue. We encourage revisions to similar provisions in Title I of ERISA and elsewhere in Title IV, to further protect the rights of employees in employee benefit disputes.

Mr. Chairman, I appreciate the opportunity to present the views of the Air Line Pilots Association, and we stand prepared to work with the Subcommittee and its staff on this important legislation. I would be happy to answer any questions you may have.

Mr. CLAY. Mr. Prosten.

Mr. PROSTEN. Thank you.

Mr. Chairman, my name is Richard Prosten, research director of the Industrial Union Department of the AFL-CIO. Our department has 55 unions representing approximately 5 million workers, most of whom are covered by negotiated single-employer pension plans.

In enacting ERISA, Congress determined that the fabric of our private retirement system should be protected. By including the termination insurance program, Congress determined that workers should be insured against the loss of anticipated benefits due to business failures and other events which prevent an employer from continuing a plan.

Our panel, as you have noted, includes representatives from the steelworkers and the autoworkers unions which, among others that are affiliated with our department, have consistently supported the goals embodied in ERISA and were among the staunchest advocates of plan termination insurance when passage of ERISA was being considered by the Congress.

Since then, we have continued to pursue the goal of security for all workers during their retirement years. In the 10 years that have passed since ERISA was enacted, we have seen many examples of the legislation's success. However, in the light of that decade of experience, certain problems have come to the surface. Your legislation addresses two of these; I will comment briefly.

In his budget proposals for 1986, President Reagan included an item calling for a premium increase to help the PBGC to conduct its activities in a financially sound manner. This is a revenue-raising budget item, and it's based on the PBGC's calculation that a premium of $7.50 per participant per year would be required if the agency is to deal with its accumulated funding deficiencies as well as its future obligations.

As you will hear from some of the other union witnesses, there is reason to believe that the PBGC's request may be based on assumptions that are too optimistic. The IUD and its affiliated unions believe it is absolutely necessary that a premium increase be enacted at once, lest financial pressures on the agency build to the point where cutbacks to protections for participants and beneficiaries become a fiscal alternative.

Insofar as reforms are concerned, we support those reforms which can strengthen and improve the Termination Insurance Program. Such legislation should provide strong disincentives to terminations by requiring ongoing employers to continue to be obligated to plan for participants for the full amount of their accrued benefits. Such legislation should also reduce the opportunity for the dumping of unfunded liabilities on the PBGC.

54-587 O - 86 - 8

The Industrial Union Department and its affiliates support the Clay-Roukema bills and urge the speedy adoption of this important legislative package. We are aware that for a number of years the need for a premium increase for the corporation and the need for reforms seem to have operated against each other. In the process, the PBGC's financial position has been allowed to deteriorate from what it was when the need for a premium increase first became evident. Therefore, we urge prompt action on the question of an increase in the single-employer premium rate and trust that such action will not be delayed if agreement cannot be reached on the substantive reforms.

Our department and its affiliates are deeply committed to the long-term growth of defined benefit private pensions and to the absolute need for a stable and sound program of termination insurance. We appreciate the effort which this subcommittee has made to develop remedial legislation as contained in the Clay-Roukema bills which we trust can attract consensus support from all interested parties.

Thank you.

[The prepared statement of Richard Prosten follows:]

PREPARED STATEMENT OF RICHARD PROSTEN, RESEARCH DIRECTOR, INDUSTRIAL UNION DEPARTMENT, AFL-CIO

My name is Richard Prosten, I am Research Director of the Industrial Union Department of the AFL-CIO. The Industrial Union Department has 55 affiliated unions, representing approximately five million workers, most of whom are covered by negotiated single-employer pension plans. Appearing with me today are Howard Kline, counsel for Employee Benefits of the United Steelworkers of America, Alan V. Reuther, associate general counsel of the United Automobile Workers and Gay Haynie of the UAW's Social Security Department.

On behalf of the IUD and its affiliates, I wish to thank you for the opportunity to appear before the subcommittee and to express our views on single-employer pension legislation.

In enacting ERISA, Congress determined that the fabric of our private retirement system should be protected, by including a termination insurance program in that legislation, Congress determined that workers should be insured against the loss of anticipated pension benfits due to business failures and other events which prevent an employer from continuing a pension plan. The Steelworkers, the Auto Workers, and other IUD affiliates have consistently supported the goals embodied in ERISA and were among the staunchest advocates of plan termination insurance when passage of ERISA was being considered by the Congress. Since then, we have continued to pursue the goal of security for all workers during their retirement years.

In the ten years the passed since the enactment of ERISA, we have seen many examples of the success of that legislation. In the light of that decade of experience, certain problems surrounding the termination insurance program have come to the surface:

PREMIUM INCREASES

In his budget proposals for 1986, President Reagan included an item calling for a premium increase to help the Pension Benefit Guaranty Corporation conduct its activities in a financially sound manner. This revenue-raising budget item is based on the PBGC's calculation that a premium of $7.50 per participant per year (to become effective for plan years which begin during this calendar year) would be required if the agency is to deal with its accumulated funding deficiencies and its future obligations.

As you will hear from other union witnesses, there is reason to believe that the PBGC's request is based on assumptions that may be too optimistic. The IUD and its affiliated unions believe that it is absolutely necessary that a PBGC premium increase be enacted at once, lest financial pressures on the agency build to the point where cutbacks to protections for participants and beneficiaries become a fiscal alternative.

REFORMS

Our department is supportive of reforms which can strengthen and improve the termination insurance program as operated by the PBGC. Such legislation should provide strong disincentives to terminations, by requiring ongoing employers to continue to be obligated to plan participants for the full amount of their accrued benefits.

Such legislation should also reduce the opportunity for employers to dump unfunded pension liabilities on the PBGC. In other words, in the event a plan is terminated, the PBGC should be able to recover the shortfall between plan assets and the cost of guaranteed benefits. Legislation in this area could curb abuses which have helped to saddle the PBGC with additional shortfalls which in turn place strains on the entire PBGC program.

The Industrial Union Department and its affiliates support the Clay-Roukema bills and urge the speedy adoption of this important legislative package. We are aware that for a number of years, the need for a premium increase for the PBGC and the need for reforms seem to have operated against each other. In the process, the PBGC's financial position has been allowed to deteriorate from what it was when the need for a premium increase first became evident.

Therefore, we urge prompt action on the question of an increase in the PBGC's single-employer premium rate and trust that such action will not be delayed if agreement cannot be reached on substantive reforms. The premium increase should not become hostage to the needed reforms—lest we foster a situation in which neither is adopted and an element of insecurity is added to the lives of pension plan participants and beneficiaries.

CONCLUSION

In conclusion, we wish to emphasize that the IUD and its affiliates are deeply committed to the long-term growth of defined benefit private pensions and to the absolute need for a stable and sound program of termination insurance. Therefore, we appreciate the effort which this subcommittee has made to develop remedial legislation as contained in the Clay-Roukema bills, which we trust can attract consensus support from all interested parties.

Mr. Clay. Thank you.

Mr. Reuther.

Mr. Reuther. Mr. Chairman, my name is Alan Reuther. I'm an associate general counsel for the United Auto Workers Union. With me today is UAW actuarial consultant Gay Haynie.

The UAW appreciates the opportunity to testify before this committee concerning the proposed single-employer pension legislation. This subject is of vital concern to the 1.5 million active and retired members of the UAW, most of whom are covered under negotiated single-employer defined benefit pension plans.

At the outset, the UAW would like to emphasize that the Pension Plan Termination Insurance Program established under title IV of ERISA has been quite successful in achieving the objectives it was intended to accomplish. In countless situations, the Pension Benefit Guaranty Corporation has been instrumental in guaranteeing that participants and beneficiaries receive at least a portion of their anticipated pension benefits in situations where pension plans have been terminated with insufficient assets to pay for these benefits.

The membership of our union, which has been especially hard hit during this period of time by the traumas of plant closings and pension plan terminations, has found the termination insurance program to be of invaluable assistance in assuring their retirement income security. The UAW is therefore firmly committed to the continuation of the program. We are vehemently opposed to any cutbacks in the protections now afforded to participants under that

program, and we believe that certain steps ought to be taken by Congress to strengthen and improve the operations of the program.

Most importantly, the PBGC urgently needs an increase in the premiums paid by single-employer pension plans in order to finance properly its current funding deficiency and future operations.

The PBGC's deficit has now reached $462 million. The PBGC has calculated that an increase in the premium to $7.50 per participant per year retroactive to last year is the minimum amount needed to permit the agency to defray the accumulated deficit and to guarantee that its future obligations to participants will be met. The General Accounting Office has reviewed the operations of the PBGC and testified in support of this premium increase.

There is broad bipartisan support for the premium increase. President Reagan included the increase in his budget proposals for fiscal year 1986, and the premium increase was also included in the budget resolutions that have been adopted by the House and Senate. We are pleased to note that Chairman Clay and Representative Roukema have joined in introducing legislation calling for the premium to be increased to $8.50 per participant per year prospective for plan years commencing after December 31, 1985.

The UAW urges the members of this committee to approve expeditiously the Clay-Roukema premium increase legislation. The PBGC has been requesting an increase in the premium since 1982. Any further delay in enacting a premium increase will simply aggravate the PBGC's financing problems and make it even more difficult to address this problem later on.

We are concerned that if the financial pressures on the PBGC are not alleviated there inevitably will be demands to cut back on the protections afforded to participants and beneficiaries under the Termination Insurance Program. To prevent any cutbacks in these essential productions, the PBGC premium must be substantially increased now.

Some persons have questioned the size of the increase that is being requested and expressed concern that it will impose an undue burden on plan sponsors. Although the requested increase seems large, it is important to note that this increase is not terribly large in absolute terms. The proposed increase would amount to about three-tenths of a cent per hour in labor costs.

If the premium is increased to $8.50, this would simply impose an additional cost of $590 a year on an employer with 100 employees covered under it's pension plan—hardly an overwhelming burden.

It is also important to note that the PBGC premium has not been increased since 1977. The value of the present premium level has now been eroded by inflation; thus, part of the premium increase being requested simply reflects the need to catch up with inflation.

Some persons have questioned whether an increase in the PBGC premium should be linked to the enactment of certain substantive reforms to the Termination Insurance Program. The fact is, however, that the financial pressures currently facing the program have been largely caused by the two severe economic recessions the economy has endured since 1974 which led to an increase in the number of terminations involving the PBGC.

The PBGC's deficit has grown because it has been performing the job it was created to handle—that is, guaranteeing pension benefits in situations where an employer goes out of business or is experiencing severe economic difficulties and is genuinely unable to maintain its pension plan.

The PBGC's deficit cannot be attributed to any loopholes, abuses, or other deficiencies in the Termination Insurance Program. Thus, there is no reason to link the premium increase to the enactment of any substantive reforms in the program.

In our judgment, it would be a mistake to continue to hold the premium increase hostage to the reform legislation. It will clearly take some time for Congress to grapple with the difficult issues associated with substantive reform of title IV. If the PBGC premium increase is linked to the adoption of substantive reforms, at best, the enactment of the premium increase will be delayed; at worst, we are concerned that neither the reforms nor the premium increase will be adopted. Either scenario would be disastrous for the PBGC and for the retirement income security of participants.

The UAW continues to be committed to the enactment of certain substantive reforms to strengthen and improve the operation of the Termination Insurance Program. Specifically, we continue to support reforms that are designed to prevent profitable employers from dumping their unfunded pension liabilities onto the PBGC and also to prevent profitable employers from evading responsibility for paying for certain nonguaranteed pension benefits, including early retirement supplements and benefit improvements made within 5 years of a plan termination.

When a plan is terminated with insufficient assets to pay for all promised pension benefits, under current law the PBGC only guarantees the payment of certain benefits. It does not guarantee early retirement supplements and only partially guarantees benefit improvements made within a few years of a plan termination. The employer generally has no obligation to continue to pay for these types of nonguaranteed pension benefits. Thus, in some cases, participants have still lost a substantial portion of their pension benefits despite the PBGC guarantees and despite the fact that the employer continued in business and was highly profitable.

The first panel of witnesses today has provided the committee with graphic and compelling evidence that this type of abuse is not simply hypothetical, it is a concrete reality that has undermined the legitimate retirement expectations of numerous participants. The sad fact is that the program has not completely solved the Studebaker type of problem.

We still encounter cases where participants who have labored 20, 30, and even 40 years to earn certain pension benefits suddenly have a portion of their benefits wiped out when their pension plan is terminated. These benefits are lost not because their employer went bankrupt or otherwise was unable to pay for the benefits. The benefits are lost because of loopholes in existing law that permit profitable employers to walk away from these obligations to participants.

Mr. Clay. The time of the gentleman has expired.

[The prepared statement of Alan Reuther follows:]

PREPARED STATEMENT OF ALAN V. REUTHER, ASSOCIATE GENERAL COUNSEL, UAW

Mr. Chairman. My name is Alan V. Reuther. I am an Associate General Counsel for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW). With me today is UAW Actuarial Consultant Gay Haynie.

The UAW appreciates the opportunity to testify before this Committee concerning the proposed single-employer pension legislation. This subject is of vital concern to the 1.5 million active and retired members of the UAW, most of whom are covered under negotiated single-employer defined benefit pension plans.

Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA) in order to provide greater protection for the benefit rights of employees. In particular, Congress created the pension plan termination insurance program under Title IV of ERISA because it was concerned that "owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits." 29 U.S.C. § 1001. To address this problem, Title IV provided for the establishment of the Pension Benefit Guaranty Corporation (PBGC), which guarantees certain pension benefits in situations where a pension plan is terminated with insufficient assets to pay for all vested benefits. Through the PBGC, Congress hoped to prevent a reoccurrence of tragedies such as the Studebaker plan termination, which so shocked the conscience of the nation.

It has now been over ten years since ERISA was enacted. The pension plan termination insurance program has been quite successful in achieving the objectives it was intended to accomplish. In countless situations, the PBGC has been instrumental in guaranteeing that participants and beneficiaries receive at least a portion of their anticipated pension benefits in situations where pension plans have been terminated with insufficient assets to pay for these benefits. The membership of our Union, which has been especially hard hit during this period of time by the traumas of plant closings and pension plan terminations, has found the pension plan termination insurance program to be of invaluable assistance in assuring their retirement income security. But for the existence of the PBGC, the Studebaker type of tragedy would have been repeated in numerous communities across this country.

As the Members of this Committee are no doubt aware, there are a number of major industrial concerns—such as Wheeling Pittsburgh Steel and International Harvester—that are experiencing serious economic difficulties at the present time, and that have large unfunded pension liabilities. We fervently hope that the economic collapse of these companies and the termination of their pension plans can and will be avoided; nevertheless this is a very real possibility confronting the workers and retirees of these companies. In light of this danger, the pension plan termination insurance program is more important than ever as a bulwark against the possibility that thousands of these workers and retirees might have their pension benefits suddenly wiped out by the economic collapse of these concerns.

Because the PBGC plays such an important role in assuring the retirement income security of pension plan participants, the UAW is firmly committed to the continuation of the termination insurance program. We are vehemently opposed to any cutback in the protections now afforded to participants under that program. And we believe that certain steps ought to be taken by Congress to strengthen and improve the operation of the program.

There are two major problems currently facing the termination insurance program. First, there is an urgent need for an increase in the premiums paid by single-employer pension plans to the PBGC. Second, there is a need for certain substantive reforms to the operation of the termination insurance program. Let me discuss each of these issues in turn.

PREMIUM INCREASE

The PBGC needs an increase in the premiums paid by single-employer pension plans in order to finance properly its current funding deficiency and future operations. The PBGC's deficit has now reached $462 million. The PBGC has calculated that an increase in the premium to $7.50 per participant per yer (effective for plan years commencing after December 31, 1984) is the minimum amount needed to permit the agency to defray the accumulated deficit and to guarantee that its future obligations to participants will be met. (If the premium increase is only made effective for plan years commencing after December 31, 1985, the PBGC has calculated that the premium must be increased to $8.10.) The General Accounting Office has reviewed the operations of the PBGC, and testified in support of this premium increase.

If anything, the UAW believes that the PBGC's request for a premium increase may be based on overly optimistic assumptions. If there should be another downturn in the economy, as many economists have predicted, a new wave of plant closings and pension plan terminations would put additional pressure on the termination insurance program. There already are a number of companies with large unfunded pension liabilities that are in precarious financial condition. If these companies are ultimately forced to terminate their pension plans, the solvency of the termination insurance program could be placed in jeopardy. Thus, in order to insure that the legitimate retirement expectations of participants will continue to be protected under the termination insurance program, the UAW calls on Congress to approve promptly a substantial increase in the premiums paid by single-employer plans to the PBGC.

There is broad, bipartisan support for the premium increase. President Reagan included the premium increase in his budget proposals for fiscal year 1986, and the premium increase was also included in the budget resolutions that have been adopted by the House and Senate. And we are pleased to note that Chairman Clay and Rep. Roukema have joined in introducing legislation (H.R. 2812) calling for the premium to be increased to $8.50 per participant per year (effective for plan years commencing after December 31, 1985).

The UAW urges the Members of this Committee to approve expeditiously the Clay-Roukema premium increase legislation. The PBGC has been requesting an increase in the premium since 1982. Any further delay in enacting a premium increase will simply aggravate the PBGC's financing problems, and make it even more difficult to address this problem later on. The UAW is also concerned that if the financial pressures on the PBGC are not alleviated, there inevitably will be demands to cut back on the protections afforded participants and beneficiaries under the termination insurance program. To prevent any cutbacks in these essential protections, the PBGC premium must be substantially increased now.

Several issues have been raised in connection with the request for an increase in the PBGC premium. First, some persons have questioned the size of the increase that is being requested, and expressed concern that it would impose an undue burden on plan sponsors. However, as previously indicated, the General Accounting Office has verified the need for the premium increase. Furthermore, although the requested increase seems large, it is important to note that this increase is not terribly large in absolute terms. The proposed increase would amount to about three-tenths of a cent per hour in labor costs, which is a small price to pay for such valuable protection for the retirement income security of participants. Representatives of the business community admitted when testifying before the Oversight Subcommittee of the Ways and Means Committee last year that the premium increase is not going to "break" any employers. Even if the premium is increased to $8.50, this would simply impose an additional cost of $590 per year on an employer with 100 employees covered under their pension plan—hardly an overwhelming burden.

It is also important to note that the PBGC premium has not been increased since 1977. Thus, the value of the present premium level has been eroded by inflation. Had the premium level been automatically adjusted for inflation, it would now be $4.70. Thus, part of the premium increase being requested simply reflects the need to catch up with inflation.

Second, some persons have questioned whether an increase in the PBGC premium should be linked to the enactment of certain substantive reforms to the termination insurance program. There has been concern that the PBGC's deficit and the need for the premium increase are somehow attributable to certain "deficiencies" in the termination insurance program, and that substantive reforms in these areas are therefore necessary in order to avoid the need for future premium increases.

The fact is, however, that the financial pressures currently facing the termination insurance program have been largely caused by the two severe economic recessions the economy has endured since 1974, which led to an increase in the number of plan terminations involving the PBGC. The PBGC's deficit has grown because it has been performing the job it was created to handle—that is, guaranteeing pension benefits in situations where an employer goes out of business or is experiencing severe economic difficulties, and is genuinely unable to maintain its pension plan. As the PBGC has previously admitted in testimony before various Congressional Committees, the bulk of its deficit cannot be attributed to any loopholes, abuses or other deficiencies in the termination insurance program. Thus, there is no reason to link the premium increase to the enactment of any substantive reforms in the program.

In the long run, the financing problems facing the PBGC can only be solved by government trade and economic policies that promote a return to a full employment economy. In the short run, the only way to address the financing problems confront-

ing the PBGC and to assure the financial solvency of the termination insurance program is for Congress to enact promptly a substantial increase in the PBGC premium.

The UAW strongly urges this Committee not to insist on any linkage between the PBGC premium increase and the enactment of substantive reforms in the termination insurance program. This does not mean that we have abandoned our support for reform legislation. The UAW has supported in the past and we continue to support legislation to close various loopholes in Title IV of ERISA that permit profitable employers to "dump" their unfunded pension liabilities onto the PBGC, and to evade responsibility for paying certain non-guaranteed pension benefits. We are prepared to work with the Members of this Committee to develop legislation which will address these problems in a manner that is acceptable to all interested parties.

However, we are not overly optimistic about the changes for achieving such a consensus. The UAW and other unions have labored for the last four years to develop a consensus with the PBGC, the business community, and other interested parties on acceptable reform legislation. Unfortunately, to date those efforts have not been successful.

Accordingly, in our judgment it would be a mistake to continue to hold the premium increase "hostage" to the reform legislation. It will clearly take some time for Congress to grapple with the difficult issues associated with substantive reform of Title IV. This is a complex area, that will require careful consideration by this Committee. If the PBGC premium increase is linked to the adoption of substantive reforms in the termination insurance program, at best the enactment of the premium increase will be delayed. At worst, we are concerned that neither the reforms nor the premium increase will be adopted. Either senario would be disastrous for the PBGC and for the retirement income security of participants.

The UAW therefore strongly urges you not to delay action on the premium increase until agreement has been reached on substantive reforms. Instead, we call on this Committee to approve promptly a substantial increase in PBGC premium, as proposed in the Clay-Roukema bill.

It is worth noting that the PBGC premium increase is a positive budget item. Enactment of the premium increase would result in a reduction in government outlays of between $184 and $333 million in fiscal year 1986 (depending on the size of the increase). Thus, not only will the premium increase not cost the federal government any money. It will actually result in a small reduction in the size of the federal deficit.

SUBSTANTIVE REFORMS

The UAW continues to be committed to the enactment of certain substantive reforms to strengthen and improve the operation of the termination insurance program. Specifically, we continue to support reforms that are designed (1) to prevent profitable employers from "dumping" their unfunded pension liabilities onto the PBGC, and (2) to prevent profitable employers from evading responsibility for paying certain non-guaranteed benefits—including early retirement supplements and benefit improvements made within five years prior to a plan termination.

Under current law, employers are free to terminate their plans and transfer unfunded pension liabilities to the PBGC at any time. The PBGC's claim against an employer is limited to 30 percent of the employer's net worth. In a number of situations, profitable employers with little or no net worth have been able to terminate their pension plans with impunity and "dump" their unfunded pension liabilities onto the PBGC, leaving the PBGC with no effective recourse. This type of abuse has aggravated the PBGC's deficit, thereby putting additional strains on the termination insurance program (and indirectly onto the other employers who pay premiums to finance the program).

In addition, when a plan is terminated with insufficient assets to pay for all promised pension benefits, under current law the PBGC only guarantees the payment of certain benefits. It does not guarantee early retirement supplements, and only partially guarantees any benefit improvements made within five years of a plan termination. Moreover, the employer generally has no obligation to continue to pay for these types of non-guaranteed benefits. Thus, in some cases, participants have still lost a substantial portion of their pension benefits—despite the PBGC guarantees, and despite the fact that their employer continued in business and was highly profitable.

The first panel of witnesses today has provided the Committee with graphic and compelling evidence that this type of abuse is not simply hypothetical; it is a concrete reality that has undermined the legitimate retirement expectations of numer-

ous participants. Although the termination insurance program has generally been successful in providing a greater measure of security to participants, the sad fact is that the program has not completely solved the "Studebaker" type of problem. Unfortunately, we still encounter cases where participants who have labored 20, 30, and even 40 years to earn certain pension benefits suddenly have a portion of their benefits wiped out when their pension plan is terminated. These benefits are lost not because their employer went bankrupt or otherwise was unable to pay for the benefits; the benefits are lost because of loopholes in existing law that permit profitable employers to walk away from these obligations to participants.

We want to emphasize that the pension benefits which are lost in these situations are benefits which had already been earned by the participants under the terms of their pension plan. That is, the participants had satisfied all of the age, service and other eligibility criteria required under the terms of the pension plan to establish their entitlement to the benefits. In many cases, the benefits were already in pay status. And yet the participants still lost these benefits and their employer was able to abdicate its responsibilities with impunity.

The UAW believes that this type of abuse cries out for a legislative remedy. That is why we have taken the position that any reform legislation which purports to deal with the problems associated with the termination insurance program must not only deal with the problem of profitable employers "dumping" unfunded liabilities onto the PBGC; it must also deal with the problem of profitable employers evading responsibility for non-guaranteed benefits.

In our judgment, the reform legislation which has also been jointly introduced by Chairman Clay and Rep. Roukema (H.R. 2813) addresses both of these problems in a balanced and constructive manner. The UAW therefore supports the Clay-Roukema bill, and urges the Members of this Committee to give it favorable consideration.

This legislation would provide that, unless an employer can satisfy certain objective indicia of economic hardship, the employer would only be allowed to terminate its pension plan in a "standard termination". Under a standard termination, the employer would be required to fund the plan fully for all benefits to which participants and beneficiaries are entitled as of the termination date. Thus, both the PBGC and the participants would be protected against any losses.

In those situations where an employer can satisfy the indicia of economic hardship, the employer would be allowed to terminate its pension plan in a "distress termination". Under a distress termination, the PBGC would generally be required to step in and guarantee basic benefits under the plan, just as under existing law. However, in addition to its present claim for up to 30% of the employer's net worth, the PBGC would also be allowed to recover 10% of the employer's profits for up to ten years. Furthermore, the employer would also be required to set aside 5% of its profits for up to ten years to pay for any non-guaranteed benefits to which participants are entitled under the terms of the plan.

We would like to emphasize that the reforms proposed in the Clay-Roukema legislation are relatively modest. They are predicated on the eminently fair principle that in those cases where an employer continues in business and remains profitable, the PBGC and participants should be afforded greater protection against any losses. But where an employer goes bankrupt, for example, the legislation would not impose any additional liabilities on the employer beyond those required under existing law. Thus, the proposed legislation would help to assure the solvency of the termination insurance program and that participants receive all promised pension benefits. It would accomplish these two goals without imposing undue burdens on plan sponsors.

We recognize that some questions have been raised about the proper terminology which should be used to describe the types of non-guaranteed benefits that should be protected under both a standard termination and a distress termination. We believe that as a matter of simple equity, any reform legislation should protect any benefits—whether guaranteed or non-guaranteed—which participants and beneficiaries are entitled to as of the termination date. That is, if a participant has already satisfied all of the conditions required under the terms of the plan to be eligible for a benefit—including any age, service or other requirements—then the participant should be assured of receiving that benefit so long as the employer continues in business and is profitable.

Although the single-employer pension legislation which has been proposed by the Administration is similar in many respects in the Clay-Roukema bill, the Administration's proposal contains a number of serious defects. Most importantly, the Administration's bill would not provide adequate protection for non-guaranteed benefits, since it does not contain any provisions requiring employers to set aside part of their profits to pay for non-guaranteed benefits following a distress termination.

Thus, some profitable employers would still be able to evade responsibility for paying these benefits.

The UAW is also concerned that the Administration's bill would weaken the protections currently afforded to participants under Title I of ERISA. Specifically, it would appear that employers who simply "freeze" their pension plan (rather than terminating the plan) would no longer be bound by the funding, vesting and other requirements under Title I. It is also unclear whether the employer would be required to continue paying premiums to the PBGC.

Furthermore, the UAW believes that the criteria for entering into a "distress" termination may be too harsh under the Administration's bill. If the barriers to entering into a distress termination are too high, employers who are experiencing legitimate economic hardship may be prevented from obtaining necessary relief. The net result could be to force some employers out of business, to the detriment of the active and retired workers, as well as the PBGC.

The Administration's bill contains an unnecessary provision that could allow the PBGC to bypass the existing procedures for involuntarily terminating a pension plan, under the guise of appointing a "receiver" for the plan. The Administration's bill would also cut back on the existing benefit guarantees, by specifying that benefits are not guaranteed under a standard termination or in situations where benefits are lost due to the insolvency of an insurance company. The UAW is vehemently opposed to any cutback in the benefit guarantees or any expansion of the PBGC's authority to involuntary terminate pension plans. These proposals have no place in any "reform" legislation.

Finally, we are concerned that the Administration's bill lacks any provisions which would enable participants, employers, unions, or the PBGC to effectively enforce their rights under the proposed legislation.

OUTSTANDING ISSUES

There are two major issues which are left unresolved by the Clay-Roukema legislation, and which are addressed in a problematic manner by the Administration's bill.

A. Security for funding waivers

First, there is a question as to whether, and in what manner, the PBGC should be accorded greater security for its claims in situations where the employer obtains a waiver from the minimum funding standards. The PBGC is justifiably concerned that employers are able to obtain large funding waivers which allow the unfunded liabilities under their pension plan to increase. If an employer subsequently terminates its pension plan, these additional unfunded liabilities are dumped onto the termination insurance program. However, the solution to this problem proposed by the Administration—providing the PBGC with an automatic lien on the employer's assets any time a funding waiver is granted by the Internal Revenue Service—goes too far and would be counterproductive in our judgment.

The same is true of the other proposal suggested by the Committee—namely, requiring the employer to post a bond or enter into some security agreement with the PBGC when a waiver is granted.

To begin with, there is no need to impose a lien or other security arrangement on an employer's assets every time the employer obtains a funding waiver. In only a small handful of cases has the granting of a funding waiver actually led to an increase in the PBGC's liabilities.

More importantly, the UAW is concerned that the automatic imposition of a lien on the employer's assets could interfere with the ability of employers to obtain necessary credit. The net result might be that some employers experiencing economic difficulty might be forced out of business.

This is not simply academic speculation. During the last several years, the UAW and other unions have had to enter into difficult negotiations with employers who are experiencing severe economic difficulty, in an effort to work out mutually acceptable "concessions" that would enable the employer to continue in business, preserve the jobs of employees, and protect the benefits of retirees. In addition to wage concessions, in many cases an important part of the "concession" package has involved the company obtaining a funding waiver for its pension plan. Now, obviously from it's perspective, the PBGC is better off if it automatically gets ironclad security for its claims every time a funding waiver is granted. But the other side of the coin is that the granting of such a security interest to the PBGC may dry up the employer's line of credit, and make it impossible for the employer and the union to work out an acceptable concession package that will enable the employer to continue in business. If this occurs, and the employer is forced out of business, not only will the

active workers be worse off. All of the pension plan participants will be worse off when the pension plan is terminated. And the PBGC may also be worse off than it would have been had the employer obtained the funding waiver, continued in business, and been able to avoid terminating the pension plan.

Obviously this is an extremely complex area, with many competing considerations. The UAW submits that the best way to approach the question of additional security for the PBGC upon the granting of a funding waiver is on a case by case basis, rather than through some automatic lien or other security arrangement. We believe that the Internal Revenue Service already has the authority under existing law to require as a condition for granting a funding waiver that the employer provide additional security to the PBGC or to the plan. In the event this might be considered a violation of the prohibited transaction rules in Title I of ERISA, the Internal Revenue Service and/or the Department of Labor can grant a limited exemption from these rules. If the IRS and DOL believe they need additional statutory authority to do this, Title I could easily be amended to clarify matters. In our judgment, any statutory change should make it clear that the IRS may only require an employer to provide additional security to the PBGC or to the plan as a condition for obtaining a funding waiver if the IRS determines that this would not seriously impair the ability of the employer to continue in business. We believe that this type of approach is preferable to either of the other approaches suggested by the Committee since it would allow a disinterested party—the IRS—to weigh all of the complex, competing interests on a case by case basis.

B. Contingent liability—transfer rules

Second, there is a question as to whether any reform legislation should include so-called "contingent liability" or "transfer" rules, to prevent profitable employers from "dumping" their unfunded liabilities onto the PBGC by simply spinning off weak divisions or subsidiaries. The UAW believes that this represents a serious loophole in the termination insurance program. To the extent that any reform legislation closes off the other loopholes in present law, the "spin-off" loophole will become that much more attractive to employers who wish to shed responsibility for unfunded pension liabilities.

Unfortunately, we do not believe there is a consensus among the interested parties on the best way to address this problem. The single-employer pension legislation that was considered by the House and Senate in the last Congress contained an elaborate set of "contingent liability" rules, which proved to be highly controversial. The opposition of the business community to these proposals ultimately was responsible for the demise of that legislation. We have not seen any indication to date that the business community has changed its position on this issue. Thus, we are concerned that the inclusion of any "contingent liability" rules in the proposed single-employer pension legislation would destroy the chances for any meaningful reforms.

Neither the Clay-Roukema bill nor the Administration's bill currently contain any contingent liability provisions. However, the Administration's bill provides that if the principal purpose of any transaction is to "evade or avoid" liability, the transaction may be disregarded in applying the provisions of Title IV. It is our understanding that the addition of the phrase "or avoid" is intended to give the PBGC a means of attacking abusive spin-off transactions.

Although this provision in the Administration's bill would be of some help in closing the spin-off loophole, and thus would be better than no provision at all, it is still very problematic. Clearly this provision would lead to extensive litigation. Given the difficult burden of proof involved in establishing that the principal purpose of any transaction was to "evade or avoid" liability under title IV, the PBGC could not be assured of being able to catch all abusive transactions. At the same time, the vagueness of the provision could have a chilling impact on certain types of legitimate business transactions.

The UAW believes it would be much preferable for Congress to enact a detailed set of "transfer rules" that spell out exactly when an employer will continue to be liable to the PBGC and to participants under Title IV in spin-off situations. The UAW has provided the Committee, the PBGC, and the various business groups with a draft of a proposal in this area. We believe that this draft proposal responds to the concerns expressed by the business community about the contingent liability rules that were contained in the legislation that was considered in the last Congress: that is, the need to eliminate any "buyer liability", to fix the potential amount of an employer's liability at the time a "transfer" takes place, and to provide an exemption for small businesses. We welcome any comments or suggestions on how this proposal could be improved. We also invite the business community to draft alternative proposals that would be more acceptable to employers.

The UAW is prepared to work with this Committee, the PBGC, the business community and other interested parties in a good faith effort to develop a clear, concise, and workable set of "transfer" rules. Given the complexity in this area, however, we do not believe that progress on the other Title IV reforms should be held up while the interested parties struggle to achieve a consensus on this issue.

CONCLUSION

In conclusion, the UAW appreciates the opportunity to appear before this Committee to testify on the proposed single-employer pension legislation. We believe the most urgent task facing Congress is to enact a substantial increase in the PBGC premium, to enable the agency to defray its current deficit and to meet its future obligations to participants. We also believe that Congress should enact certain substantive reforms to the termination insurance program, and in particular, should close the loopholes in existing law which permit profitable employers to evade responsibility for paying non-guaranteed benefits. We are prepared to work with the Members of this Committee in developing legislation that will address both of these problems in a balanced and constructive manner.

Mr. Clay. Mr. Kline.

Mr. Kline. Thank you, Mr. Chairman.

My name is Howard Kline. I'm counsel for employee benefits for the United Steelworkers of America, and I'm testifying on behalf of our president, Lynn Williams, today.

Our union, on behalf of its more than 1 million active members and its hundreds of thousands of retirees, has long believed that the establishment and maintenance of a soundly financed Single-Employer Termination Insurance Program is essential to the attainment of meaningful retirement income security for workers and their families. We supported the establishment of the PBGC and the Single-Employer Termination Insurance Program from the inception of ERISA and have, over the years, supported efforts to improve the Single-Employer Termination Insurance Program.

As the recession continues to ravage industrial America, we are reminded daily that employers do go out of business, underfunded pension plans do terminate, and retirees and their families stand to lose all or nearly all of their retirement benefits but for the protections afforded by the PBGC Single-Employer Program.

We firmly believe that the continuation of this program on a sound financial basis is fundamental to the welfare of our members and their families as well as all of our fellow workers who look to the fulfillment of their employer's pension promise in order to enjoy meaningful retirement income security.

We strongly support the proposal to raise the Single-Employer Program's annual per-participant premium from $2.60 to $8.50 effective January 1, 1986. This conclusion is based on the fact that the Single-Employer Insurance Program finished fiscal year 1984 with a deficit of $462 million which, absent a substantial premium increase, will undoubtedly grow. If one assumes that even a few large employers terminate their pension plans in the near future, this deficit will grow substantially.

Our union is, at this moment, engaged in intensive efforts to save the pension plans of Wheeling-Pittsburgh Steel Corp. which has been in chapter 11 since April. We are committed to doing everything possible to avoid the termination of these plans which provide pension benefits to 10,000 retirees and cover nearly 10,000 active employees. If we are unsuccessful and the corporation does terminate those plans, the unfunded benefits guaranteed by the

PBGC would total nearly $350 million, increasing the current deficit of $462 million by more than 75 percent.

It is important to note that the increase which you propose, from $2.60 to $8.50 per participant per year, is not nearly as significant in real terms as it might first appear. Mr. Reuther has already addressed this issue, and I share his observations in this regard.

It is also important to note that the proposed $5.90 increase represents an extremely small portion of the labor costs and pension costs for a typical employer. Consider, for example, an employee whose average hourly wage is $7 and whose total hourly labor cost is $11. The employee works 2,000 hours in 1986. His wages would total $14,000; his labor cost would total $22,000. An $8.50 premium would represent only 0.04 percent of the employee's annual wages and only 0.03 percent of the employee's total annual labor cost. Surely the benefit to employees, their families, and our society as a whole of a soundly financed Termination Insurance Program far outweighs the minimal expense of the premium increase which you have proposed.

Our union shares the views of the Congress, the PBGC, and many employers that some plan sponsors are improperly shifting part of their obligation to pay the promised pension benefits on to the PBGC. We believe the Congress intended the Single-Employer Program to pay a basic level of pension benefits when the employer, because of severe business hardship, is unable to fund the payment of such benefits. We do not believe that Congress intended to afford employers the opportunity to improve their net worth by dumping unfunded PBGC guaranteed pension benefits on to the system.

We note, however, that the PBGC to date has been effective in forcing employers to abide by the spirit as well as the letter of the law with regard to these issues. It is, furthermore, abundantly clear that the PBGC's current $462 million deficit is not the result of either the termination of underfunded plans by healthy employers or the PBGC's failure to enforce the employer liability provisions of the existing law.

The current deficit is the result, in large part, of plan terminations involving employers in desperate economic straits. Nonetheless, we believe that title IV of ERISA should be amended to address these problems and to otherwise improve both the operation of the Single-Employer Program and the private sector pension system in general. More detailed comments regarding these proposals are contained in my statement.

One of the provisions merits special comment. Your bill would require an employer which terminates its pension plan and reduces participants' accrued benefits because of such termination and later returns to profitability to allocate 5 percent of such profits for a 10-year period to make participants whole for the losses they incurred upon the distressed termination of the plan. We believe this is a sound proposal.

Plan participants whose benefits are reduced on account of a distress termination are clearly injured by that termination. It is fundamentally unfair to absolve the employer which caused that injury from the responsibility to make those participants whole at

such time within the reasonably near future that the employer returns to profitability.

[The prepared statement of Lynn Williams follows:]

Prepared Statement of Lynn R. Williams, President, United Steelworkers of America

INTRODUCTION

The United Steelworkers of America is pleased to have the opportunity to testify before the Subcommittee as it considers H.R. 2811, 2812, and 2813, the Single Employer Pension Plan Amendments Act of 1985 as well as the Administration's version of this legislation.

Our Union, on behalf of its more than one million active members and its hundreds of thousands of retirees, has long believed that the establishment and maintenance of a soundly-financed single employer termination insurance program is essential to the attainment of meaningful retirement income security for workers and their families. We supported the establishment of the Pension Benefit Guaranty Corporation and the single employer termination insurance program from the inception of ERISA and have over the years supported efforts to improve the single employer termination insurance program. As the recession continues to ravage industrial America, we are reminded daily that employers do go out of business, underfunded pension plans do terminate, and retirees and their families stand to lose all or nearly all of their retirement benefits but for the protections afforded by the PBGC's single employer program. We firmly believe that the continuation of this program on a sound financial basis is fundamental to the welfare of our members and their families as well as all of our fellow workers who look to the fulfillment of their employer's pension promise in order to enjoy meaningful retirement income security.

PREMIUM INCREASE

The United Steelworkers of America strongly supports the proposal to raise the single employer program's annual per participant premium from $2.60 to $8.50, effective January 1, 1986.

This conclusion is based on the undisputed fact that the single employer termination insurance program finished FY 1984 with a deficit of $462 million which, absent a substantial premium increase, will undoubtedly grow. If one assumes that even a few large employers terminate their pension plans in the near future, this deficit will grow substantially. Our Union is at this moment engaged in intensive efforts to save the pension plans of Wheeling-Pittsburgh Steel Corporation, which has been in Chapter 11 since April. We are committed to doing everything possible to avoid the termination of these plans, which provide pension benefits to 10,000 retirees and cover nearly 10,000 active employees. If we are unsuccessful and Wheeling-Pittsburgh Steel Corporation terminates these plans, the unfunded benefits guaranteed by the PBGC would total nearly $350 million, increasing the current deficit of $462 million by more than 75%. As you are undoubtedly aware, other employers in other industries face similar problems. Prudence requires that Congress begin the task of funding the existing deficit immediately. If we wait, we risk confronting the need for a premium increase against the backdrop of a much larger deficit in the single employer program, when reason and prudence are more likely to yield to the exigencies of the moment.

It is important to note that the increase which you propose, from $2.60 to $8.50 per participant per year, is not nearly as significant in real terms as it might first appear.

If the $2.60 premium is adjusted for inflation from its enactment in 1978 through the present time, the premium in effect today would be $4.70, not $2.60. Taking into account the premium income "lost" because the $2.60 premium level has not been adjusted for inflation and the economic depression in which much of our manufacturing sector has been mired for nearly four years, an increase in the premium from $2.60 to $8.50 does not seem very significant.

It is also important to note that the proposed $5.90 increase in the annual premium per participant represents an extremely small portion of the labor cost and pension cost for a typical employer.

Consider, for example, an employee whose average hourly wage is $7.00 and whose total hourly labor cost is $11.00. If the employee works 2,000 hours in 1986, his wages would total $14,000 and his labor cost would total $22,000. An $8.50 premi-

um would represent only .04% of the employee's annual wages and only .03% of the employee's total annual labor cost. In a mature, basic industry, average labor costs may total $22 or even $24 per hour. For an employer with this level of labor cost, the proposed increase in the premium amounts to .01% of that labor cost. Expressed as a percentage of pension cost, the proposed increase of $5.90 per year amounts to only .085% of the annual pension funding cost per employee. Surely the benefit to employees, their families and our society as a whole of a soundly financed termination insurance program far outweighs the expense of the premium increase which you have proposed.

Finally, we note with approval that the Administration and the House and Senate in their budget deliberations have all called for a substantial increase in the annual premium, to $7.50 per participant in the case of the Administration and the Senate and to $8.50 in the case of the House.

In short, we believe that a substantial increase in the single employer termination insurance program's annual premium is urgently needed and we fully support your proposal to increase the annual premium to $8.50 per participant, effective January 1, 1986.

TITLE IV REFORMS

The United Steelworkers of America shares the view of the Congress, the Pension Benefit Guaranty Corporation and many employers that some plan sponsors are improperly shifting part of their obligation to pay the promised pension benefits to the PBGC. We believe that Congress intended the single employer termination insurance program to pay a basic level of pension benefits when the employer, because of severe business hardship, is unable to fund the payment of such benefits. We do not believe that Congress intended to afford employers the opportunity to improve their net worth by "dumping" unfunded, PBGC-guaranteed pension benefits onto the termination insurance system.

We note, however, that this so-called "dumping" problem and the related problem of employers' escaping their obligations to the PBGC through corporate re-organizations, spin-offs, transfers, etc. in anticipation of the termination of a poorly funded plan, are neither as serious nor as widespread as some would have the Congress believe. We believe that the PBGC to date has been effective in forcing employers to abide by the spirit as well as the letter of the law with regard to these issues.

It is, in any event, abundantly clear that the PBGC's current $62 million deficit is not the result of either the termination of underfunded plans by healthy employers or the PBGC's failute to enforce the employer liability provisions of the existing law. The current deficit is the result in large part of plan terminations involving employers in desperate economic straits—White Motor, White Farm, Phoenix Steel, Alan Wood Steel, and all the rest.

Nonetheless, we believe that Title IV of ERISA should be amended to address these problems and to otherwise improve both the operation of the single employer termination insurance program and the private sector pension system in general.

We support the provisions of H.R. 2811 and H.R. 2813 which set forth the criteria which a plan sponsor would be required to meet before the PBGC guarantees could be triggered. In our view, these criteria provide both objective tests which would enable an employer who truly is in distress to be able to terminate its plan and gain the relief afforded by a distress termination as well as a more subjective test which would rely heavily on the PBGC's discretion. These standards are preferable to the more restrictive standards in the Administration bill, which, except in the case of a bankruptcy proceeding, permit a distress termination only at the discretion of the PBGC. We would suggest that the Subcommittee ask the PBGC to determine how many of its insufficient terminated plans would have met the criteria in the Clay/Roukema bill and the Administration proposal and to review these criteria accordingly.

We support the expansion of the PBGC's claim for employer liability which is contained in both the Clay/Roukema and Administration proposals. Employers which return to profitability following a plan termination should not be allowed to leave the PBGC holding the bag for unfunded guaranteed benefits because the employer has a low net worth at the time of termination. The obligation to pay 10% of profits over a 10-year period appears to be a reasonable way of protecting the PBGC's interest in this regard.

We likewise support the provisions in both bills which would permit the PBGC to ignore, for employer liability purposes, transactions of the plan sponsor which are designed to permit the sponsor to evade its obligations to the PBGC. We prefer the

version which is set forth in the Administration bill because it more fully protects the PBGC.

We are unsure whether this type of provision is adequate to protect the PBGC against losses relating to changes in the plan sponsor's controlled group, etc. and hope that the Subcommittee will explore this very complex issue in detail with the PBGC.

H.R. 2813 contains a number of other key provisions which, in our view, make it far preferable to the Administration's bill.

Most significantly, H.R. 2813 requires an employer which (1) terminates its pension plan and reduces participants' accrued benefits because of such termination and (2) later returns to profitability, to allocate 5% of such profits for a 10-year period to make participants whole for the losses they incurred upon the distress termination of the plan. We believe this is a sound proposal. Plan participants whose benefits are reduced on account of a distress termination are clearly injured by the distress termination. It is fundamentally unfair to absolve the employer which caused that injury from the responsibility to make those participants whole at such time within the reasonably near future as the employer returns to profitability. This very concept underlies the Administration's proposal to impose additional profit-related liability with regard to an employer's liability to the PBGC following a distress termination. We commend the sponsors of H.R. 2811 and 2813 for extending this concept to the loss incurred by plan participants upon a distress termination and strongly urge that it be retained.

Other issues which we believe are properly addressed in H.R. 2811 and 2813 relate to challenges to proposed plan terminations, the so-called "year and a day" rule relating to guaranteed benefits, the enforcement provisions and the requirement that the PBGC in effect provide a "back-up guarantee" which would protect retirees in the event a benefit which was supposed to have been properly calculated and fully funded through insurance contracts turns out not to be. We recommend that these provisions, which do not appear in the Administration proposal, be retained in the legislation.

With respect to whether, in conjunction with the granting of a funding waiver by the IRS, (1) a lien in favor of the plan and perfectible by the PBGC should arise in conjunction with the granting of funding waivers or (2) the plan sponsor should be required to post a bond or otherwise adequately secure the waived amount, we believe the Subcommittee should carefully weigh the impact of either approach on the plan sponsor before moving ahead in this area. Employers which seek and obtain funding waivers are of necessity undergoing extreme financial difficulty. Our concern is that either requirement could serve to seriously impair the ability of the sponsor to remain in business, eventually contribute the waived amount to the plan and avoid any distress termination altogether. We urge the Subcommittee to very carefully consider the impact of either requirement in specific cases before moving ahead in this area.

CONCLUSION

This hearing, Mr. Chairman, will convincingly demonstrate three key facts relating to the single employer termination insurance program:

(1) There exists an immediate need for an increase of the annual single employer termination insurance premium to $8.50 per participant;

(2) The substantive problems which exist in the single employer termination insurance program and the various solutions to those problems are extremely complex; and

(3) The current $462 million deficit of the single employer termination insurance program exists primarily because of the condition of the economy in the last few years and not as the result of the substantive problems addressed in H.R. 2811 and 2813.

One additional consideration must be kept in mind as well: retirees and participants of plans which have terminated or are maintained by employers whose financial condition is questionable must be assured that the single employer termination insurance program, upon which their expectations for meaningful retirement income security are dependent, is a soundly-financed, viable program which continues to enjoy the support of the Congress. As in the case of all insurance-type arrangements, the program must enjoy the confidence of its potential beneficiaries; otherwise it cannot succeed in its purpose.

Accordingly, the United Steelworkers of America urges the Subcommittee to immediately report H.R. 2812, which addresses the premium issue only. The PBGC and the Administration agree that a premium increase is necessary. Its enactment

would reassure millions of retirees and soon-to-be retirees that this vital program will remain viable.

We also recommend that the Committee act as soon as practicable on H.R. 2813, which addresses the substantive Title IV issues. As we have indicated, the complexity of these issues has precluded the development of any consensus within the pension community regarding the best way to solve these difficult problems. Nonetheless, we believe that the Subcommittee should continue in its efforts to develop workable solutions to these problems and should report H.R. 2813 to the full Committee as soon as practicable.

Because H.R. 2813 is so complex and in many ways controversial, we very strongly believe that it should not be linked to the premium increase. To do so would inevitably delay the enactment of the premium increase, to the detriment of plan participants and beneficiaries.

Mr. CLAY. Thank you.

Mr. Vance, you have testified in support of tightening the funding waiver process, particularly increasing the notice requirements and giving unions and others the opportunity to comment on a company's need for a waiver. In the past, employers have objected based on privacy concerns. They are worried that competitors might have an unfair advantage if a company's financial status was open to public scrutiny. How do you respond to that concern?

Mr. VANCE. My feeling is that the waiver process itself could be limited to the three parties—the IRS, the union, and the employer—without involving the public, and in fact this has been done, Mr. Chairman, in one case where the airline did open up its books to us. We sat down with them, and we agreed with the need for the waiver, and the waiver was granted and, in fact, paid off early.

Mr. CLAY. Thank you.

Mr. Kline, if Congress were to close all of the loopholes that PBGC has identified in the past, would there still be a deficit?

Mr. KLINE. We believe there would be and that it would be a substantial deficit, probably not as large as the one that you are facing right now, but, nonetheless, a deficit would remain.

Mr. CLAY. Mrs. Roukema.

Mrs. ROUKEMA. Mr. Chairman, I note with great interest the fact that all three of these gentlemen—at least three of the four—have focused on the question of the waiver. First let me say, we have a winner in the premium increase, don't we? That's good to know.

Mr. CLAY. Nobody objects.

Mrs. ROUKEMA. Nobody objects to that.

I did note, however—I didn't catch that.

Ms. BORZI. I just said we haven't gotten to the business panel yet.

Mrs. ROUKEMA. We haven't gotten to the business panel yet.

I did note, however, that the UAW expressed some large questions. I don't want you to use our time to comment, but I would simply like to note that he didn't want—and I think wisely—that this should be held hostage to other reforms. I just want to say I don't think that needs to happen. I think we have an excellent framework here, and we can go forward, hopefully, with more than just the insurance guarantee.

But the problem that I am having, however, is on the question of the waiver. I sense that the UAW at least—and I'm not sure about the Steelworkers, because you weren't able to get to that part, and I wasn't able to read your testimony fast enough—you have some outstanding reservations as to how we deal with the waiver, and, if

you will note, we haven't defined that really in our legislation because we're not quite sure.

I do have some problems with the Air Line Pilots' viewpoint on that. I don't mean to signify that it's extreme, but I have problems with it. I think it might cause large problems for business, but, in addition, I think procedurally it would be extraordinarily difficult to do without getting into an adversarial position that would alienate both parties and maybe make it more difficult.

If either of the other two unions would like to comment further on the waiver issue, I would appreciate it, because we have yet to deal with that substantively in this legislation, and indeed we may not be able to; I don't know. I want to, however. I really want to resolve that problem.

Mr. REUTHER. Let me just say that our concern with respect to the funding waiver security issue is that if there is some provision that, let's say, imposes an automatic lien on the employer's assets, then in some cases this may wind up drying up the employer's line of credit and forcing the employer out of business. If that happens, not only do the active employees lose but the pension plan will also be terminated and the retirees will wind up losing.

We think it would be better to approach this on a case-by-case basis where there can be a balancing of all of the competing interests—the interests of the PBGC for greater security but also the interests of the employer, the active employees, and the retirees. We think perhaps this could be done by according greater authority to the IRS than it has under current law.

Mrs. ROUKEMA. Yes.

Mr. KLINE. The Steelworkers generally share that view. It really is a catch-22. In order to obtain a funding waiver, an employer has to demonstrate that it is incurring extreme hardship but there is some likelihood that it is going to recover from that hardship. Obviously, that's the time when the company, the plan sponsor, is least able to afford to buy a bond or to encumber its assets in order to provide a lien.

It's very difficult. I suggest in the testimony that the PBGC or perhaps the subcommittee would ask the PBGC to apply some of the tests to various funding waivers that have been granted in recent years and try to make some determination as to how many companies could have satisfied those requirements.

Mrs. ROUKEMA. ALPA?

Mr. VANCE. I guess my feeling is that the waiver process inherently creates an adversarial position just by bringing in a third party, and we have found that if we can sit down with the employer we have worked with employers on this basis that will recognize the need for a waiver as well as the IRS. I guess I don't share your concern about creating more adversity than having the waiver on a one-sided basis.

Mrs. ROUKEMA. Thank you.

Thank you very much, Mr. Chairman.

Mr. CLAY. Mr. Kildee.

Mr. KILDEE. I have no questions, Mr. Chairman.

Mr. CLAY. Mr. Fawell.

Mr. FAWELL. No questions.

Mr. CLAY. Mr. Atkins.

Mr. ATKINS. Yes. I'd like to ask the panel—the Pension Benefit Guaranty Corporation had a plan that was drawn up for them that recommended increasing the premium to around $20 over a 5-year period that would eliminate the deficit of the Corporation. Our particular plan involves an increase to $8.50. Do you know what the difference is between the set of assumptions?

Mr. KLINE. Not offhand.

Mr. ATKINS. Do you feel that at $8.50 the system would stay solvent?

Mr. KLINE. It's obviously very difficult to predict what is going to happen. If the economy heads south, obviously there are going to be more terminations and more unfunded guaranteed liabilities, but we would expect that—and I believe the PBGC shares this view—that an $8.50 premium would solve the problem for a substantial period of time absent unforeseen developments.

Mr. ATKINS. So if we make the increase to $8.50, it's your sense that we would be talking a period of years before there is an additional increase required in those premiums?

Mr. REUTHER. Obviously, if you should have a major plan termination such as Wheeling-Pittsburgh Steel or International Harvester, that could change things, but it's our judgment that, absent some major plan termination, the $8.50 premium would be sufficient to place the PBGC on a sound financial basis.

Mr. CLAY. Mr. Owens.

Mr. OWENS. I have no questions, Mr. Chairman.

Mr. CLAY. Mr. Hayes.

Mr. HAYES. Mr. Chairman, thank you very much, but, as you well know, when you come in late, it's unfortunate they've scheduled a committee meeting at the same time, and you have to make a choice sometimes between which ones you begin with, you forfeit your right to raise questions.

Mr. CLAY. Thank you.

Mr. HAYES. Thank you very much.

Mr. CLAY. Mr. Reuther, when the administration testified on our single-employer bill last Congress, we were told that when a funding waiver was granted one of the conditions the IRS imposed was that the waived funding amounts not yet repaid would become a debt owed to the plan if the plan terminated.

Recently, we learned that the IRS has limited this type of payback to the plan to the amounts necessary to bring the plan assets to the guaranteed level. By this action, the IRS, in my opinion, is protecting the company, not the participants in the plan. The IRS is assuring that when the plan terminates there will not be one extra nickel to pay participants benefits beyond the guaranteed level.

First of all, were you aware of this practice? and, secondly, what do you think of it?

Mr. REUTHER. It just recently came to our attention that the IRS has been doing this. We share your views that this is really an outrageous practice. The IRS should be saying that the entire amount of the funding waiver is due in the event the plan is terminated so that the participants as well as the PBGC have greater protection. It simply doesn't make sense to only have protection for the PBGC.

Mr. CLAY. Are there any further questions?

If not, we want to thank you for your testimony.

Mr. CLAY. The next witnesses will consist of a panel: Messrs. Charles Moran, Richard S. Raskin, and Paul Jackson.

Welcome to the subcommittee. Your entire statements will be included in the record at this point, and we ask you not to read your entire statements, but, in deference to our time problems, we ask you to be brief in your presentations.

The first witness is Mr. Charles Moran.

STATEMENTS OF CHARLES MORAN, SENIOR VICE PRESIDENT, MANUFACTURERS HANOVER TRUST, AND PRESIDENT, ERISA INDUSTRY COMMITTEE; RICHARD S. RASKIN, CONSULTING ACTUARY, THE WYATT CO., REPRESENTING THE ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS; AND PAUL JACKSON, VICE PRESIDENT, THE WYATT CO., REPRESENTING THE NATIONAL SMALL BUSINESS ASSOCIATION

Mr. MORAN. Good morning. It's a pleasure to be here with you this morning.

I'm senior vice president of Manufacturers Hanover Trust Co., but I appear here today as president of, and on behalf of, the ERISA Industry Committee, commonly known as ERIC.

ERIC, is an association of over 100 major employers concerned with national retirement and employee benefit policy issues. These employers sponsor plans benefiting over 9 million workers and the beneficiaries of those workers. ERIC's members share with this subcommittee a deep interest in the success and expansion of the private system. ERIC's members also share the conviction that the Termination Insurance Program should not be abused.

During the past 5 years, ERIC has worked diligently with others involved in efforts to reform the Single-Employer Termination Program. ERIC has devoted thousands of hours and committed substantial resources to identifying the flaws in the current program and to developing remedies for those flaws. Others, including labor and other business groups as well as the members and staff of this subcommittee and the administration, have also committed substantial time and resources. Regrettably, that effort has not been successful to date.

I will comment today both on the pending House bills and the administration's legislative proposal. These bills propose a substantial increase in the annual premium along with major structural changes in the operation of the Single-Employer Program.

Turning first to the proposed premium increase, we are concerned that both the House bills and the administration proposal would roughly treble the current premium in a single year. We fear that an increase of this magnitude will seriously impair the health and expansion of the defined benefit segment of the private pension system. Certainly the trebling of the premium is a disincentive to plan sponsors.

In view of the effects that a premium increase will have, we think that Congress should exercise restraint and moderation and that any increase should be limited to the amount necessary to preserve the financial soundness of the Single-Employer Program.

The PBGC has confirmed that there is no immediate crisis and that its ability to pay benefits is not in immediate jeopardy. In addition, the recent trend in net claims against the PBGC has been favorable.

The proposed increases are based on the PBGC's estimate of its future loss experience. However, future loss experience is dependent on an indeterminate number of factors and is impossible to predict. The PBGC's experience and resulting data are simply not sufficient at this time to justify a threefold increase in premiums.

The proposed reform measures also raise concerns. ERIC's members share the subcommittee's interest in maintaining the financial soundness of the Termination Insurance Program and in protecting the program against abuse. Some of the proposed reform measures would advance these objectives. But others would not and would have harmful effects that are not justified by the need to prevent abuse.

In particular, both the House bills and the administration bill would expand employer liability well beyond the point necessary to prevent abuse. In the case of the distress termination, the House bills would require the employer to make contributions to a trust that would provide benefits in excess of those guaranteed by the PBGC.

These proposals have no effect whatever on the financial soundness of the Termination Program and impose an additional level of employer liability that is inconsistent with the basic principles on which the Insurance Program was originally based and clearly go well beyond the province of protecting that system.

A comment is appropriate on the uncertainty of the termination where the principal purpose is that of avoiding liability. If this provision is enacted, an employer will not be able to sell part of its business without fear that many years later the PBGC will seek to hold it liable for the buyer's termination of the seller's former plan. The principal purpose provision would not even limit the seller's liability to the unfunded benefits in existence at the time of the sale. Thus, the seller could be responsible for liabilities created by the buyer long after the sale. There is no justification for imposing this draconian liability.

None of the bills includes the complex transferor liability rules which have been included in some previous proposals. We applaud that the bill's sponsors have recognized how undesirable these rules would be. We strongly oppose them as unworkable.

We are gratified that Chairman Clay has developed a bond approach as an alternative to reliance on liens. We commend the chairman for this imaginative effort to develop an appropriate alternative to the use of liens. Since the bond proposal was announced only recently, ERIC and its members are still in the process of studying its full implications. We will convey our views on the proposal to the subcommittee as soon as our study is completed.

The House bills would create a new cause of action that could be brought by labor unions, participants, and beneficiaries. We believe there is no need for this new cause of action. Participants and beneficiaries are now amply protected by ERISA's fiduciary responsibility provisions.

The bills would also require a plan administrator to notify labor unions, participants, and beneficiaries long before a termination notice was filed with the PBGC and even before obtaining relief from ERISA's funding standards. We believe that these cumbersome notice requirements are both unnecessary and harmful. The notice requirements of current law together with the PBGC and IRS enforcement authority are more than sufficient to make the Single-Employer Program work. We are not aware of any serious problem with them.

The proposed notice requirements would impair an employer's ability to act promptly to freeze or terminate a plan or to obtain funding relief in situations where prompt action may be imperative. We urge that the proposed notice requirements be deleted.

We are not prepared at this time to respond specifically to the four questions that were submitted to us. Our response, however, will be made the subject of a written submission which will be prepared by our policy committee and forwarded as soon as possible.

We would like to recognize that Chairman Clay has shown a willingness to tackle old problems with new approaches, and that has been refreshing. We very much appreciate the opportunity to present our views to this subcommittee. As in the past, we are more than willing to continue to work constructively with the subcommittee and its staff on the issues addressed in these bills.

Thank you.

[The prepared statement of Charles Moran follows:]

Prepared Statement of Charles Moran on Behalf of the ERISA Industry Committee

My name is Charles Moran. I am Senior Vice President, Manufacturers Hanover Trust Company. I appear today as President and on behalf of The ERISA Industry Committee, commonly referred to as ERIC. I have brought with me Mark Ugoretz, Executive Director of Eric, and John Vine of Covington & Burling, ERIC counsel, to assist in responding to any questions the subcommittee may have.

ERIC is an association of over 100 major employers concerned with national retirement and employee benefit policy issues. As the sponsors of plans benefiting more than 9 million workers, and their beneficiaries, ERIC's members share with this subcommittee a deep interest in the success and expansion of the private sector pension system. ERIC's members also share the conviction that the termination insurance program should not become a vehicle for abuse.

During the past five years. ERIC has been deeply involved in efforts to reform the single-employer termination program. ERIC has devoted thousands of hours and committed a substantial portion of its resources to identifying the flaws in the current program and to developing remedies for those flaws. Others, including labor and other business groups as well as the members and staff of this subcommittee and the Administration, have also committed similar time and resources. Regrettably, that effort has not been successful. Neither ERIC nor any other party has produced a proposal that is both appropriate and generally acceptable. Therefore, ERIC has, as have others, taken a fresh look at the issue.

I will comment today both on the pending House bills and on the Administration's legislative proposal. These bills propose a substantial increase in the annual premium and major structural changes in the operation of the single-employer program.

Turning first to the proposed premium increase, we are concerned that both the House bills and the Administration proposal would roughly treble the current premium in a single year: from $2.60 to $8.50 in the case of the House bills and to $7.50 in the case of the Administration bill.

We fear that an increase of this magnitude will seriously impair the health and expansion of the private pension system. The higher rate will discourage small and medium-sized companies, emerging "high-tech" companies, and similar employers from adopting defined benefit pension plans. The increased rate may cause compa-

nies in financial difficulty to replace their existing pension plans with defined contribution plans, thus further contracting the Pension Benefit Guaranty Corporation's (PBGC's) premium base. We recognize that the increase in the premium will not always be the controlling factor; however, together with the other regulatory burdens now imposed on plan sponsors, the premium increase is likely, in many cases, to have a substantial and possibly decisive effect.

In view of the effects that a premium increase will have, we think that Congress should exercise restraint and moderation in approving any increase, and that any increase should be limited to the amount necessary to preserve the financial soundness of the single-employer program.

When measured by this standard, the proposed premium increases are excessive. The PBGC has confirmed that there is no immediate crisis and that its ability to pay benefits is not in immediate jeopardy. In addition, the recent trend in net claims against the PBGC has been favorable. Net claims declined from $264 million in 1982, to $189 million in 1983, and to $36 million in 1984. At the same time, a recent PBGC study shows that the private pension system experienced significant growth, and thus a significant increase in premium revenue, during 1980-82, despite the fact that the economic recovery had not yet begun. In vew of these favorable developments, we think that the proposed trebling of the premium rate is excessive.

The proposed increases are based on the PBGC's estimate of its future loss experience. However, future loss experience is dependent on an indeterminate number of factors and is impossible to predict. The PBGC's experience and resulting data are simply not sufficiently reliable to justify a three-fold increase in premium costs. The favorable trend in net claims experience, the remarkable growth of the private pension system, and the improved funding of many plans, brought about by the growing impact of ERISA's minimum funding standards, all indicate that the PBGC's predictions of future losses are unduly gloomy. Moreover, the PBGC is using funding methods and assumptions to finance the deficit that are more costly than those that many companies use to finance their own plans—a 15-year amortization period, for example. If companies cannot afford to fund their own plans at such liberal rates, it is inappropriate to force them to fund the losses of other plans at such rates.

I would also note that some observers regard the PBGC premium at a tax and the proposed premium increase as a tax increase. This view is supported not only by the compulsory nature of the PBGC program, but also by the fact that the PBGC's receipts and expenditures are included as part of the Federal budget. We have been informed that some in the Administration seek to increase premiums even higher in order to maximize its accounting effect on the budget. We see no reason to single out pension plan sponsors for what may be perceived to be a tax increase.

In sum, we think that trebling the annual premium is extreme, unjustified, and harmful to the private pension system.

The proposed reform measures are also of deep concern to us. ERIC's members share the subcommittee's interest in maintaining the financial soundness of the termination insurance program and in protecting the program against abuse. Some of the proposed reform measures would advance these objectives. But many others would not, and would have harmful effects that are not justified by the need to prevent abuse.

In particular, both the House bills and the Administration bill would expand employer liability well beyond the point necessary to prevent abuse. In the case of a distress termination, the House bills would require the employer to make contributions to a trust that would provide benefits in excess of those guaranteed by the PBGC. These proposals have no effect whatever on the financial soundness of the termination program and impose an additional level of employer liability that is inconsistent with the basic principles on which the insurance program is based and clearly go well beyond the province of protecting the system.

In addition, many of the proposed measures would make it unduly difficult for employers to continue to conduct normal business transactions. For example, the Administration bill provides that a corporate transaction, such as the sale of a business to an unrelated third party, will be disregarded if a principal purpose is to avoid or evade liability. Although the House bills refer only to evading liability, and not to avoiding liability, the difficulties created by these proposals cannot be resolved by semantic distinctions. Regardless of the terminology used, if the provision depends upon "a principal purpose" of a transaction, its scope and application will always be fraught with uncertainty. If this provision is enacted, an employer will not be able to sell part of its business without fear that many years later, the PBGC wil seek to hold it liable for the buyer's termination of the seller's former plan. The "principal purpose" provision would not even limit the seller's liability to the unfunded benefits in existence at the time of the sale. Thus, the seller could be respon-

sible for liabilities created by the buyer after the sale. There is no justification for imposing this draconian liability.

None of the bills includes the complex transferor liability rules that have been included in some proposals. We are gratified that the bills' sponsors have recognized how undesirable these rules would be. We strongly oppose their introduction.

The Administation's bill would impose joint and several liability on all of the members of a controlled group whenever any member of the group amended a plan to freeze the accrual of benefits. Joint and several liability would also arise under both the House bills and the Administration bill whenever a group member obtained a funding waiver. These liabilities, together with the lien that would arise under the Administration bill, could cripple an employer's ability to sell part of its business.

We are gratified that Chairman Clay has developed the bond approach as an alternative to reliance on liens. We commend the Chairman for his imaginative effort to develop an appropriate alternative to the use of liens. Since the bond proposal was announced only recently, ERIC and its members are still in the process of studying it. We will convey our views on the proposal to the subcommittee as soon as our study is completed.

The House bills would also create a new cause of action that could be brought by labor unions, participants, and beneficiaries. There is no need for this new cause of action. Participants and beneficiaries are now amply protected by ERISA's fiduciary responsibility provisions. The PBGC is in the best position to administer the termination insurance program and to enforce its requirements. Litigation by unions, participants, and beneficiaries would only interfere with the PBGC's enforcement authority and impose additional costs and burdens on the courts, employers, and the private pension system. Moreover, the provisions calling for the mandatory award of attorney's fees to the plaintiff in certain cases provides an unjustified incentive to litigate even the most trivial and technical issues.

The bills would also require a plan administrator to notify labor unions, participants, and beneficiaries long before a termination notice was filed with the PBGC and even before obtaining relief from ERISA's funding standards. We believe that these cumbersome notice requirements are both unnecessary and harmful. The notice requirements of current law, together with PBGC and IRS enforcement authority, are more than sufficient to make the single-employer program work. We are not aware of any serious problem with them. The proposed notice requirements would impair an employer's ability to act promptly to freeze or terminate a plan or to obtain funding relief in situations where prompt action may be imperative. We urge that the proposed notice requirements be deleted.

We very much appreciate the opportunity to present our views to the subcommittee. As in the past, we are more than willing to continue to work constructively with the subcommittee and its staff on the issues addressed by the bills.

Mr. Clay. Thank you.

Mr. Raskin.

Mr. Raskin. Mr. Chairman and members of the subcommittee, I am Dick Raskin, consulting actuary of the Wyatt Co. in New York. I am here today representing the Association of Private Pension and Welfare Plans whose ERISA title IV committee I chair.

As an initial matter, we have not had the opportunity to present the three bills, the alternative contingent liability rules, and the minimum funding waiver alternatives to our membership. We will be doing that within the next few weeks and would be pleased to advise this subcommittee of the results of that review.

The APPWP strongly believes that the incentives to establish and maintain defined benefit pension plans must be increased and strengthened. These plans are widely recognized as providing the most secure and reliable retirement income to participants without the risk of poor investment return and without dependence on employers' profits.

The title IV insurance system provides an important backstop for defined benefit plans. It lends credence to an employer's pension promises and assures employees that despite employer financial re-

verses, basic pensions will be guaranteed by a Government-administered fund which can support the basic benefit levels on which employees have relied.

We recognize that in order for this fund to be credible, it must be maintained on a fiscally responsible basis. Care must be taken that this valuable benefit is not overburdened by complex governmental regulations and excessively high premiums.

While we believe the prospective nature of the premium is an improvement on prior legislation and that some premium increase probably is needed, we cannot assume that the $8.50 is an appropriate level. Since the APPWP has not been privy to the documentation that might support that level, we simply raise the question whether such a substantial increase is truly necessary at this time.

Generally, we support the concept of standard and distress terminations under the legislation. The standard termination permits the employer to fund its curtailed pension obligations without interference from the PBGC. Under the distress termination, the PBGC will be saddled with liabilities only when it is clear that the employer is unable to fund the guaranteed benefits under the plan.

We are pleased that two of the bills provide specific rules where the distress termination will be operative, although certain of the distress tests add a complexity to the measures which may be unnecessary and confusing.

We strongly question the change in terminology in this bill from nonforfeitable benefits to benefit entitlements. We are unsure what the change is intended to do or the effect of the change on the liability for benefits. We see no justification for further confusing the law surrounding the definition of accrued benefits, especially in light of the confusion already existing due to the enactment of the Retirement Equity Act just last session.

We are uncertain and uncomfortable with the concept of prior notice and suspension of the termination if any collateral legal action is filed. This process may substantially delay plan termination and creates confusion and uncertainty with regard to plan administration and employer obligations in the interim.

We are pleased to see that the complex and burdensome contingent liability provisions contained in the earlier bills have been eliminated. On closer scrutiny, however, it appears that these rules have been replaced by a far more sweeping evasion language which would allow any transaction to be disregarded if a principal purpose of the transaction is to evade liability under title IV. We are concerned that this provision gives the PBGC and other parties open-ended authority to engage in lengthy, protracted litigation to impose liability on a seller of a business without a limit on how long the transaction has been in place and regardless of how well the plan has been funded or how small the unfunded liability was at the time of the transfer.

In introducing the bills, Chairman Clay suggested two alternative approaches to deal with the losses incurred by the PBGC due to minimum funding waivers: that of a lien and that of bonding. Although the details of the alternatives are not entirely clear, we believe that a more workable solution to the lien requirements of last year's bills still needs to be formulated. If some protection

needs to be afforded the PBGC, we would be happy to work with the subcommittee in fashioning appropriate rules.

The APPWP recognizes the importance of the title IV termination insurance system and supports a reasonable premium level and constructive legislative changes that will neither interfere with normal business transactions nor unduly burden the process of plan termination.

Thank you.

[The prepared statement of Richard Raskin follows:]

PREPARED STATEMENT OF RICHARD RASKIN ON BEHALF OF THE ASSOCIATION OF PRIVATE PENSION AND WELFARE PLANS

Mr. Chairman and Members of the Subcommittee, I am Richard S. Raskin, consulting actuary of The Wyatt Company in New York City. I am here today representing the Association of Private Pension and Welfare Plans ("APPWP"), whose ERISA Title IV Committee I chair. The APPWP is a national nonprofit organization founded in 1967 with the primary goal of protecting and fostering the growth of this country's private benefits system. The APPWP represents over 475 organizations across the United States, including hundreds of plan sponsors, as well as leading organizations from every element of the employee benefits community which support employer sponsored benefit plans: investment firms, bank, insurance companies, accounting firms, actuarial and benefits consulting firms and various others associated with employee benefit plans. Collectively our membership is involved directly with the vast majority of employee benefit plans maintained by the private sector.

As an initial matter, we have not had the opportunity to present the three bills, the alternatives contingent liability rules, and the minimum funding waiver suggetions to our membership. We will be doing that within the next few weeks and would be pleased to advise this Subcommittee of the results of that review.

The APPWP strongly believes that the incentives to establish and maintain defined benefit pension plans must be increased and strengthened. These plans are widely recognized as providing the most secure and reliable retirement income to participants without the risk of poor investment return and without dependence on an employer's profits.

In defined benefit plans, employers bear the investment risk and the responsibility of adequate funding in addition to the administrative requirements such as PBGC filings, actuarial valuations and the like that are unique to defined benefit plans. Care must be taken that this valuable benefit is not overburdened by complex governmental regulation and excessively high premium levels.

PROPOSED PREMIUM LEVEL

The Title IV insurance system provides an important backstop for defined benefit plans. It lends credence to an employer's pension promises and assures employees that, despite employer financial reverses, basic pensions will be guaranteed by a government-administered fund which can suport the benefit levels on which employees have relied. We recognize that in order for this fund to be credible, it must be maintained on a fiscally responsible basis. Today, the deficit in the single-employer program may threaten this fundamental policy. Thus, the APPWP does not object to a reasonable and demonstrably necessary prospective increase in the premium.

H.R. 2811 and 2812 provide for an annual premium of $8.50 per participant which represents more than a three-fold increase from the current level of $2.60. Moreover, based on PBGC's current budget request, it appears that the level proposed in these bills would leave about $6.00 for expected future claims, although the level of annual claims incurred by the PBGC has declined rather dramatically in the last three fiscal years from $264 million to $36 million. PBGC's budget request suggests that the agency would need $5.00 per participant per year to cover expected claims over the next 15 years, at an average expected claims level of $185 million per year. We see no reason to assume that the level will be of that magnitude, especially in light of the proposed structural changes in the program which should logically reduce claims against the system. While we believe that the prospective nature of the premium is an improvement on prior legislation, we cannot assume that $8.50 is an appropriate level. Since the APPWP has not been privy to the documentation that might support that level, we simply raise the question whether such a substantial increase is truly necessary at this time.

TERMINATIONS

Generally, we support the concept of standard and distress terminations under the legislation. The standard termination permits the employer to fund its curtailed pension obligations without interference from the PBGC. Under the distress termination, the PBGC will be saddled with liabilities only when it is clear the employer is unable to fund the guaranteed benefits under the plan. We are pleased that H.R. 2811 and 2813 provide specific rules where the distress termination will be operative, although certain of the "distress tests" add a complexity to the measures which may be unnecessary and confusing.

We strongly question the change in terminology in this bill from nonforfeitable benefits to "benefit entitlements." We are unsure what the change is intended to encompass, nor the effect of the change on liability for benefits. We see no justification for further confusing the law surrounding the definition of accrued benefits, especially in light of the confusion already engendered by the enactment of the Retirement Equity Act just last session.

Under the distress termination, we believe an employer should only be liable for the payment of the guaranteed benefits to the extent of 30% of its net worth plus a contingent net profit interest in the future until the guaranteed benefit liability is satisfied. We are opposed to the additional profit interest to fund the accrued benefit in excess of the PBGC guaranteed amount. The concept of distress termination is that the employer's financial situation is sufficiently precarious that it will be unable to fund the plan's promised benefits. If the law requires the employer to provide continued funding for accrued benefits under the plan, this additional burden may make it difficult for these employers to reorganize their business. In addition, it may provide a disincentive to establish defined benefit plans in any situation involving a risky business venture. Moreover, the entire amounts contributed to this supplemental trust would invariably be consumed by the considerable administrative costs attendant to this process.

Finally, we are uncertain and uncomfortable with the concept under H.R. 2811 and 2813 of prior notice and suspension of the termination if any collateral legal action is filed. This process may substantially delay plan terminations and creates confusion and uncertainty with regard to plan administration and employer obligations during the interim.

CONTINGENT LIABILITY

Initially, we were pleased to see that the complex and burdensome contingent liability provisions contained in earlier bills had been eliminated from H.R. 2811 and 2813. On closer scrutiny, however, it appears that those rules have been replaced by far more sweeping "evasion" language which would allow any transaction to be disregarded, if a principal purpose of the transaction is to evade liability under Title IV. We are concerned that this provision gives the PBGC and other parties open-ended authority to engage in lengthy, protracted litigation to impose liability on a seller of a business, without a limit on how long the transaction had been in place and regardless of how well the plan had been funded or how small the unfunded liability was at the time of the transfer. Moreover, the new enforcement provision adds incentive for such action to be routinely initiated. Our membership has not had sufficient opportunity to review the alternative, more detailed provisions and as we stated earlier, we intend to do so promptly. However, the APPWP believes that we must all keep in mind whether the administrative costs of these provisions and the disruptive effect that they may have on normal business transactions would be offset by a very modest increase in the premium and no legislative changes in this area.

MINIMUM FUNDING WAIVERS

In introducing the bills, Chairman Clay suggested two alternative approaches to deal with the losses incurred by the PBGC due to minimum funding waivers. Although the details of the alternatives are not entirely clear, we believe that a more workable solution to the lien requirements of last year's bills needs to be formulated. If some protection needs to be afforded the PBGC, we would be happy to work with the Subcommittee in fashioning appropriate rules.

CONCLUSION

The APPWP recognizes the importance of the Title IV termination insurance system, and supports a reasonable premium level and constructive legislative

changes that will neither interfere with normal business transactions, nor unduly burden the process of plan termination.

Mr. CLAY. Thank you.

Mr. Jackson.

Mr. JACKSON. My name is Paul Jackson. I'm here on behalf of the National Small Business Association.

Mr. Chairman, I'll just summarize my testimony rather than reading it and try to emphasize the more important parts of it.

Mr. CLAY. Thank you.

Mr. JACKSON. The report of the President to the Congress in May 1985, on the state of small business contained some interesting figures in the pension section. Among employers of 1 to 24 people, 14.9 percent of those people were covered by pension plans in 1979 and 14.4 percent in 1983. The total pension coverage dropped from 48.3 percent to 45.6 percent over that period among employers of all size.

The PBGC's latest report showed that from 1983 to 1984 the number of people covered by defined benefit pension plans dropped from 31,354,000 to 30,957,000, a decrease of 1.3 percent over a period of time when our employment in the country was rising by 1.2 percent.

The reason for mentioning this is simply that what we have here is legislation affecting people's rights. I support rights as strongly as anyone else, but when you start adding rights to one person, you have to take something away from somebody else, and you tend to destroy a total balance. In a way, it's like a waterbed. When you push down one corner, the other three go up.

Here we have a situation in which the number of plans is shrinking, the base on which the PBGC is collecting premiums is shrinking, and we have legislation proposing an increase to $8.50 in the premium and decreasing employers' rights in several respects. My concern is that, in the long run, this may discourage people from adopting plans. It makes it just more difficult to run a small business and to have a plan.

The premium, I believe, is high. A year ago, when the premium was proposed at $7.50, I said that $5 was enough. Today I say that $6. is enough. If you had had an $8.50 premium for the period 1982, 1983, and 1984, which includes the 2 worst years in the last 50 for terminations, the PBGC's deficit of $188 million at the beginning of the period would have risen to a surplus of $143 million at the end. The $8.50 is simply too high. It doesn't have to be that high.

But the labor representatives were right. Small business isn't arguing about the premium. Less is better as far as we are concerned, but if it has to be $8.50, we'll pay that. We are just delighted that you folks have listened to us over the past few years when we objected to the contingent employer liability which we felt would interfere with the sale of business and with the 100-percent employer liability which we thought would affect credit.

Certainly the present bill, while it imposes obligations on business, does so in far less dramatic a fashion, and business, I think, can live with this.

I agree with my colleagues on the matter of the freeze and the distress termination. It makes a pension plan harder to work with. It's like telling the driver of a bus that we're going to change the

brake system on this bus so that when you put your foot on the brake, the first thing that happens for the first 5 seconds is that a sign goes up telling all the passengers, "Get back in your seats;" then the brake comes on. We have a 30-, 60-, 90-day delay period—it doesn't matter—there's a delayed reaction, and it just makes it that much more difficult to operate.

When a small business gets in trouble, it terminates the workers. Termination of the pension plan is pretty bad, but termination of the workers terminates the plan and the workers, both, and that's even worse.

Finally, we do oppose—and I have to oppose something here; I just wouldn't feel right. [Laughter.]

We do oppose the added 5 percent of profit to provide nonguaranteed benefits. I think we have guaranteed benefits now at a level that is reasonable. Most of the small pensions are guaranteed by the present guarantee system. Benefits above $20,000 a year are not; they ought to be funded; those people have to run risks.

But I don't think this is the right time to expand employer obligations. We are really trying to support a system that is slowly running in the red, and so small business would probably prefer just a premium increase to a premium increase plus these other things.

But, on balance, we believe that what you have presented us with this year in the form of legislation is far superior to what we had last year, and I do want to thank you for listening to us and our complaints of a year ago.

I do wonder when you are going to do something about the multiemployer situation. That's a nightmare. That's even worse than this one.

Mr. Clay. Let us resolve one thing at a time.

[The prepared statement of Paul Jackson follows:]

Prepared Statement of Paul H. Jackson on Behalf of the National Small Business Association

Mr. Chairman and members of the committee, my name is Paul Jackson. I am a consulting actuary and I am testifying on behalf of the National Small Business Association, a multi-industry trade association representing approximately 50,000 small business firms nationwide. We appreciate the opportunity you have given us to present some of our views regarding the single employer pension plan amendments.

Small business is slowly being squeezed out of the pension plan business. Only 14% of workers in firms employing 1 to 24 are covered by a pension plan, compared with 72% covered in firms employing 500 or more. Furthermore, the percentage coverage has been declining in recent years. The reasons should be obvious. The rules and requirements for establishing an employer pension plan are becoming more complex by the day and the rules for changing these plans, freezing them or terminating them, are about to be made even more complicated. We find ourselves in general agreement with your purposes in submitting these bills. We hope that as a result of these hearings and further thought, some complexities in this legislation can be eliminated.

Getting to the specific details of H.R. 2811, we agree with you that an increase is needed in the PBGC premium. You have suggested that it should go from $2.60 to $8.50. We believe that something well short of $8.50, however, would be sufficient. The $8.50 premuim would have enabled PBGC to operate on a break-even basis in the two worst years in the last 50 for plan terminations and market values. The latest published material we have from PBGC shows the financial results through September 30, 1983. Investment results have continued to be favorable and indeed at this point in time the major problem facing Congress may be the termination of pension plans with too much in assets rather than too little. In any event, we will

not oppose an $8.50 premium if that is the only premium acceptable to PBGC and the Congress. We do believe a $6.00 premium would be adequate for the purpose currently. From our standpoint obviously "less is better".

We agree wholeheartedly with your decision to eliminate the very troublesome proposals that have evolved over a period of years regarding contingent employer liability. Those proposed provisions were not only very complicated, they would have interfered with the sale of a business to such an extent that smaller businesses simply could not have run the risk of operating pension plans. We also agree fully with your decision to grant PBGC authority to recover losses it may suffer as a result of unscrupulous employers engaging in transactions for the sole purpose of evading liability under the Act. We live in a world in which the individuals doing wrong and creating mischief force all other citizens to give up freedoms and go through a lot of fuss and bother. This legislation would impose the fuss and bother on the wrongdoer rather than on the employer who merely wished to provide his employees with a pension and who innocently sold his business and retired. We fully support the approach you have taken in H.R. 2811.

The legislation proposes the appointment of an advisory council to conduct a premium study. We fear, however, that if the advisory council consists primarily of academics who prefer the theoretical beauty of risk-related premiums, that this council may ignore the practical problems that would face small business if substantial modifications are made in premiums. The initial ERISA premium of $1.00 per covered participant was small enough that any inequities could be ignored on de minimis grounds. Hopefully the $8.50 premium is still sufficiently small. If premiums were to be based on actuarial valuations of guaranteed or vested benefits, many problems would arise. Many small businesses have plans that are valued only once every three years. Then, too, there would be a need for the government to establish acceptable assumptions, prescribe methods for valuing assets, etc. This might well lead to a situation where the cost to a small business of calculating the amount of premium it owes PBGC exceeds the amount of that premium. Again, we emphasize, keep things simple. In an ideal world we could do a lot better than a flat $8.50 premium, but with the limited administrative facilities small businesses have, multiplying the number of people covered by $8.50 is trouble enough.

We agree with the general concept that employers should be permitted to freeze benefit accruals and go on funding for the benefits that have been earned up to that date. We also agree that special provisions should be available to employers who face substantial business hardships. While we agree with the general approach taken in H.R. 2811, we oppose the idea that an employer should be required to provide 60 days advance notice of a freeze or 90 days advance notice of a termination. The need to mail an official amendment to each participant, each beneficiary, each union and the PBGC 60 days in advance of the date of freeze assumes that a small business can continue to operate as is for 60 days or 90 days without any problems. What if a small business loses a major contract that literally puts it out of business? Suppose a plant burns down, or the owner dies. Forcing a small business to continue pension accruals for three more months is just one more good reason not to have a pension plan at all. Sometimes in business it is necessary to act immediately. Certainly in distress situations a business should have the right to freeze or terminate a plan immediately and then give prompt notice to the various parties.

In addition to the notice problem, we believe the criteria setting out distress situations is simply inadequate and needs to be expanded. Distress situations should not only permit employers who are losing money gradually to phase out their pensions gradually, but also should permit companies that have been struck a catastrophic blow to take more desperate measures. If pensions cannot be cut back, employees will simply have to be laid off or terminated. While we agree with the desirability of giving the covered worker as much notice as possible of a pending take-away of his future pension credits, we believe that some situations are so clear and unexpected that failure to give advance notice, say, of the freezing of pension accruals because the company plant was destroyed in an earthquake, would surely be understood and accepted by the covered worker.

The real problem with distress terminations is that the small business that considers the possibility of terminating its pension plan in order to slip through hard times will just not have sufficient time to submit substantial evidence to PBGC and wait for their decision. If they are really able to prove on the date of filing that they will be unable to pay their respective debts when due unless they terminate their pension plan, then they will have "gone under" long before PBGC decides that they are right. Small businesses go out of business in an instant, not a 24-month period. We believe there should be some reference in H.R. 2811 to the loss of contracts, to

acts of God, to natural catastrophies, etc., if a business is to have any real opportunity to terminate under distress situations.

We believe the rules relating to burdensome pension costs are too difficult to meet. The contribution/wage ratio will rarely double in practice. Distress terminations should be restricted to cases where the employer is losing money or has low income and the contribution/income ratio reflects the diminishing of the employer resources that are avaiable for pensions. Probably the contribution/wage ratio should simply be eliminated.

H.R. 2811 would expand the plan sponsor's liability from 30% of net worth which was imposed by ERISA, to a basis where, in addition, 10% of before-tax profits over the following 10-year period could be attached. We do not take serious objection to this expansion of an employer's liability. We believe indeed that it would have far less impact on employer credit than prior proposals and we support the concept that if an employer has promised his people a benefit, he should be responsible for seeing that the money is there to pay that benefit. We do not agree, however, with the proposal in H.R. 2811 to impose an additional 5% liability on pre-tax profits to cover non-guaranteed benefits that may have been lost at termination. We object on the principle that Congress should not at this time expand the employer's liability beyond the benefits that are guaranteed. Guaranteed benefits are limited in amount so that the lower-paid employees will probably receive their full pensions. Guaranteed benefits phase in benefit improvements over a 5-year period so that if a business disaster should follow a generous pension improvement, the employer is not forced out of business. We do not believe that limiting guarantees to guaranteed benefits is unreasonable. In addition, the proposal to set up separate trusts for handling the 5% contributions and distributing the benefits will be a collosal administrative mess. Supposing, for example, that profits do not emerge until the 5th and subsequent years, but that some employees or beneficiaries who did not receive their full non-forfeitable benefit died before profits emerged. When the money comes in subsequently, how is it to be allocated? One might staff up another organization the size of PBGC just to handle this aspect.

Although the provision of full accrued benefits, whether guaranteed or not, is highly desirable, we do not believe that Congress should expand the promises already made to workers at a point in time when the problem is shoring up the PBGC so that it can deliver on present promises. We recommend that we take one step at a time here. We would agree to support the 10% profit imposition to cover guaranteed benefits if you will strike from the legislation the provision that imposes an additional 5% of profit liability on employers to cover benefits that are not guaranteed. Indeed, if the $8.50 premium is as we believe excessive, and if plan funding develops fewer losses in the future as it is supposed to, then perhaps at some future date the level of guaranteed benefits might be expanded to some extent. Surely this is a more logical approach than a piecemeal attempt to provide part of the non-guaranteed benefits through another new program.

As an actuary, I was interested in the new notice requirements set forth in Section 8 of the bill. I am not sure I understand how an Enrolled Actuary can certify as to the amount of assets "as of a proposed date of final distribution". The proposed date is presumably a future one and while actuaries can estimate the liabilities that might exist at that date, it is next to impossible to estimate the market value of the assets. Perhaps what is needed here is not certification, but a statement by an Enrolled Actuary giving his best estimates of these amounts.

We have set out the foregoing comments on some minor technical points in order to assist you with the modification of this legislation so that it will work better in practice. We agree that some modification to the plan termination program might be desirable, but we are not certain what new problems will be created by the proposed changes. We do know that this legislation will create far fewer problems for small businesses than similar legislation that has been proposed in prior years. We do not really object to the major thrust of this legislation. We would, however, be perfectly happy to support a bill that did nothing but raise the premium tax to the $6.00 level this year, a $7.00 level next year, and an $8.00 level in the following year, with no loophole closing whatever.

It seems to us that the proponents of major change have not made their case. The plan termination insurance program is not a perfect one by any means. There are flaws and loopholes in it. By and large, over the decade following ERISA, it has done its job. While there has been some abuse, that abuse has been inconsequential in the financial affairs of PBGC. Abuse of the system amounts to less than $.25 of the proposed $8.50 premium.

We have a pretty good record from the past of what premium might be necessary if the present program just continues, flawed though it is. If we are going to intro-

duce new restrictions, clearly the same premium is not necessary. Either the new restrictions will save money or they should not be adopted. Thus, the PBGC should not point at the loopholes that have resulted in terrible losses and that need closing on the one hand, and then at the same time take the losses that have resulted from those loopholes and use them to determine the necessary prospective premium under legislation that closes those loopholes.

On balance, small business would probably prefer an $8.50 premium with nc other changes to even a $6.00 premium with the changes proposed in this bill. We continue to oppose the concepts of contingent employer liability following the legitimate sale of a business. We thank you for having listened to our concerns and for taking what certainly is a far more practical approach than any in recent memory. We hope you will soon fix up the multi-employer insurance program. That is a real nightmare for small business.

Mr. CLAY. Mr. Jackson, thank you.

You spoke so eloquently last year at our pension losers hearing about the moral responsibility that the Federal Government has to compensate those who lost vested rights prior to the passage of ERISA. How does that square with your last statement that you just made on your opposition to the provision of our bill which requires a company which has gone through a distress termination to set aside 5 percent of profits for 10 years to compensate participants?

Mr. JACKSON. It's not an inconsistent position, sir. What I said last year was, there was a group of people who lost benefits, lost minimal benefits, really—$100, $200 pensions—that have been ignored in this process. The Federal Government has stepped up and said we have some obligation in this regard, but after bringing the people in to testify, they were left out. They have been left out still, and rather than increase benefits for people who are now covered by the PBGC's coverage and then increase benefits further for others, I would like to see those people covered.

I'd like to see the PBGC paying the pension losers. I'd like to see the program on a basis where one generation can say when it retires to the people who are taking over their jobs, "We did our share for the people who were old when we were working. Now it's your turn."

Basically, what you've got is a compact between generations here. The dollars are almost incidental. We have to support the PBGC, and I think the business community does. It would like to see it work well.

But if you want to expand the guarantee, that's something else again. The guarantee cuts off two types of benefits: No. one, benefits above a certain level—$20,000 a year—and there's some question in my mind as to whether small business really is interested in paying more dollars in so that the corporation executive can get a $90,000 pension; No. two is the benefit improvement that comes in at the last minute.

In the case of Chrysler, for example, when it was in difficulty, it sat down with its union and negotiated the usual contract. In some cases, they can negotiate lower benefits. But if you happen to negotiate what you think is a reasonable benefit and then in the next year end up with terrible business conditions and you're just about going out of business, the question is, isn't it reasonable to phasein that benefit improvement?

I think the original purpose in ERISA was to prevent companies that were obviously going bankrupt from just increasing their pen-

sion plans before they went under and increasing the guaranteed benefits.

Mr. CLAY. I'd like to direct this to each of you.

You heard testimony this morning from two witnesses who have been victimized in a rather callous manner by two profitable companies. Do you support the concept in both my bill and the administration's bill that profitable companies like Lear Siegler and Walco should be required to pay the full pension benefits of their workers and retirees?

Mr. MORAN. Since nobody else wants to start with that, I'll comment on it. I think that any time you hear stories such as we heard this morning, you can only be sympathetic with the individuals involved. I think when you try to assign responsibility for those problems it becomes more difficult.

I don't have a direct answer to you, but I have some questions to be asked. One is, I think as harsh as it was, those people received precisely what their negotiators had negotiated for them. I don't think there were any surprises in there.

Mr. CLAY. No, that's not true. Didn't you hear one of the witnesses testify that she was now getting $200 a month less?

Mr. MORAN. That's correct.

Mr. CLAY. Some of the people who were on retirement lost everything, according to her testimony.

Mr. MORAN. What they got was what was protected under ERISA by the PBGC.

Mr. CLAY. They didn't get what they had negotiated. One company was averaging between $65 million and $86 million profit per year, and the other company made $5.8 million in 1984, and the first three quarters of this year they have made $3.6 million profit. Are you trying to justify them not paying those people what they had guaranteed them?

Mr. MORAN. No. I think the issue is that under ERISA those benefits had not been guaranteed. The reason that the benefits weren't provided was because of the current funding of the plan. There was the option by labor representatives to negotiate faster funding of the plan. That was not an option that was taken.

All I'm saying is that it was not a surprise. The result should not have been a surprise.

Mr. CLAY. It was a shock, wasn't it?

Mr. MORAN. Certainly, but to anybody that was looking at the plan and what had been put in for those employees, it was an eventuality that could have happened, although not the one that was intended.

Mr. CLAY. One of them testified that they even attempted to get the company to freeze benefit levels and because the company could make an extra $2 million profit, they terminated instead of freezing. Did you hear that testimony?

Mr. MORAN. Yes, I did.

Mr. CLAY. Do you think that's equitable? that's fair?

Mr. MORAN. I'm certainly not qualified to comment on that because I wasn't there at the time and don't have all the facts and circumstances. I would agree with you, though, that, on the surface, whatever choice was taken had a negative impact on the people.

Let me comment just a minute on profitability. I think any time we talk about the protection of the workers, clearly, the best protection of the workers is a healthy, ongoing company employing those people. In the cases that we heard this morning, there was some segment of those companies which was no longer allowed to continue, and, again, without being familiar with the specific cases, I don't know why. That's the real shame in these cases, because, again, the best protection for every employee is a healthy company, and a healthy company is determined by ongoing profits. The fact that those companies are continuing to make profits is the best protection for the current employees of those companies.

Again, I'm not trying to defend or to in any way minimize the impact on those individuals. It was unfortunate.

Mr. CLAY. Do you support the concept that profitable companies have a responsibility to pay those plans off?

Mr. MORAN. To the extent that they have been committed both by the provisions—which are often part of collective bargaining agreements—that they have put into these plans and by ERISA, yes. Maybe I ought to let somebody else comment.

Mr. CLAY. Thank you.

I'd just like to say I don't know the facts of that case either, but just consider a situation where you have a union that bargains for so many dollars per month for your service and the benefit is increased as a result of labor negotiations and for some reason the plant is no longer profitable and they close down within a short time thereafter.

That additional benefit that was granted wasn't a benefit that could have been earned in the year following the negotiations which culminated in the shutdown of the plant. It represents all the years of past service. They multiply something by a dollar amount by all the years of past service.

Title IV provides that we will guarantee that benefit after the plan has been in effect for 5 years, giving the employer the obligation to put that benefit in over 5 years.

I'd like to suggest to you that if the plan sponsor's obligation were to be immediately liable for the benefit that was granted retroactively and could have been retroactively granted for 40 years, it would have been very difficult to get the same size benefit increase that we might have seen in the recent labor negotiations, because the company would have had to say that the immediate cost of this is much greater than it would have been by phasing it in over 5 years.

So the company, in its bargaining, thought that it was going to bargain this to be phased in over 5 years. It didn't think that it was going to bargain to phase it in over a year. The union and the company could have agreed, ERISA notwithstanding, if the company was solvent, that the benefit was to be guaranteed immediately. There's no prohibition against doing that.

I think we are talking about two different cases. This is not what these witnesses testified to.

Is your answer yes or no? Do you support the idea that profitable companies like Lear Siegler and Walco should be required to pay the full pension benefits to their workers and retirees?

Mr. RASKIN. My answer is no.

Mr. CLAY. Thank you.

Mr. Jackson.

Mr. JACKSON. I would respectfully disagree with my colleague from the Wyatt Co. Although I don't think changing the law to make it a legal obligation is necessarily the right approach.

I think the situation that I heard this morning was wrong. I think a business that promises a pension ought to pay the pension. I think it ought to pay the full pension, not just the guaranteed pension. I think employers taking these obligations on ought to pay for them.

I agree that one form of support for a worker is a profitable company, but I think just a profitable company isn't enough. There are some profitable companies that are pretty scrimy in the way they treat their workers, and that's why we have unions. On the other hand there are some companies that are very generous.

It seems to me that what is needed is a change in attitude here. If people are going to promise people pensions, if in fact the pension promised ought to be something to count on in one's old age and a reward for long and faithful service and that sort of thing, the employer ought to see that it is paid.

Some of these big companies, it seems to me, take a position that the pension obligation is like a piece of equipment in some plant located in Jamaica; you can just leave and let the thing rust there, and whatever obligations there are, just forget about them. I think that's wrong. I think it's morally wrong.

I do think, though, that we have a system where the pension promise is voluntary. Employers don't have to have a pension. In fact, more and more are not having pensions. The more burdens you put on pensions, the fewer people will have them.

Sooner or later, we are going to get to the point where the only companies that have pensions are the companies that really want to treat their employees right, and when that happens, we won't have any of these horror stories any more.

Mr. CLAY. Thank you.

Mrs. Roukema.

Mrs. ROUKEMA. Time is fleeing by here, Mr. Chairman, and I have a couple of questions. I would like to ask unanimous consent to submit questions to this panel in writing and have the record left open, because we just don't have time to cover it now.

Mrs. ROUKEMA. Mr. Raskin, I'm disturbed by your response to the chairman. I don't understand your response. It is my purpose and, I thought, the business of this business panel to advance the cause of defined benefit plans, but you have made a categorical statement that you don't think profitable companies should be responsible for the full benefits. I was rather shocked by your definitive statement. Under what circumstances? It seems to me that statement needs a clarification.

Mr. RASKIN. Thank you.

I assumed that we were talking about what the law would require of employers.

Mrs. ROUKEMA. What the law should require of employers; yes.

Mr. RASKIN. I've been involved in a number of situations in which the plan was a nonunion plan and the company stepped up and paid the benefits, and there was no problem, because the com-

pany unilaterally made a promise, and it had agreed to what it was doing.

But we were talking about a situation in which the company unilaterally did not make a promise and entered into a negotiation with the union, and there were many other things that also could have happened in the negotiations with the union.

For example, there might be an agreement that certain termination pay is paid; people may receive different forms of compensation in the event the plant is closed in terms of continuing monthly income or things like that. When those things happen, and when there are negotiations with the union, with the people who are representing those employees, I think if you then say on top of those negotiations, "I am going to have the law impose something," I don't think that's going to work to the end of——

Mrs. ROUKEMA. Do you know of circumstances where the negotiations undermined the benefits of the pension plan?

Mr. RASKIN. No. You were talking now where there's a termination.

Mrs. ROUKEMA. Yes.

Mr. RASKIN. There are other considerations in the labor contract between the employer and the union as to when a plant is shut down, especially when it's not at the end of a contract period, and there may be other kinds of compensation that are payable other than pension compensation.

Mrs. ROUKEMA. They, in your opinion, should have precedence over the pension program?

Mr. RASKIN. I'm just saying that if you impose a second set of rules——

Mrs. ROUKEMA. Well, I would like to give you the opportunity, in writing, to amplify on your position there.

Mr. RASKIN. OK.

Mrs. ROUKEMA. And specifically as you feel it should relate to this legislation.

Mr. RASKIN. Thank you.

[The information follows:]

APPWP
Association of Private Pension and Welfare Plans

Stuart J. Brahs
Executive Director

August 16, 1985

Honorable William Clay
Chairman, Subcommittee on Labor-
Management Relations
Committee on Education and Labor
2451 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The APPWP wishes to respond to Rep. Marge Roukema's request, at your subcommittee's July 16 hearing on ERISA Title IV legislation, to amplify our views on certain proposals in H.R. 2811 and 2813 which would require an employer to fund nonguaranteed benefits out of future profits after plan termination.

As the APPWP witness, Richard S. Raskin, pointed out, many plan terminations occur in the context of the closing of operations, and are often accompanied by additional severance benefits, health care continuation programs and the like. These benefits are not inexpensive for the employer to provide, and are of considerable value to employees. In fact, employers may feel financially able to provide these ancilliary benefits because of the limits on liability currently contained in Title IV of ERISA. Mr. Raskin's remarks were directed at the elimination of those limits, which in the APPWP's view disturbs the careful balance that was struck in 1974, which allows other valuable health and welfare benefits to be continued beyond an employee's separation from service. Many employers believe that these welfare benefits should not be jepardized by requiring full pension guarantees; this point of view may not have been adequately explored at your hearings.

A further concern with respect to these provisions relates to an employer's ability to successfully reorganize after bankruptcy or to recover after a period of severe business downturn. Many employers that terminate their plans for reasons of business necessity have been forced to do so by creditors or lenders, at the risk of losing valuable credit. The improved working capital conditions which might be expected following plan termination would be partially eroded by the percentage of profits paid to the Pension Benefit Guaranty Corporation under the legislation which was the subject of your hearings. However, as premium payers, we believe that any balance in this regard must favor the PBGC, in order to avoid the financial problems that that agency has experienced.

1331 Pennsylvania Ave., N.W. • Suite 719 • Washington, D.C. 20004 • (202) 737-6666

In contrast, however, the recovery of financially weak employers would be threatened by additional payments to employees over and above those required to be paid to the PBGC. In the APPWP's view, the tests for distress termination are so tightly drawn that only the very weak employer will be permitted to terminate its plan before all benefits are funded. Those restrictions become meaningless if employers who are able to meet these stringent hardship tests are still saddled with the financial obligations which contributed to their business hardship prior to plan termination.

It is to be hoped that these concerns clarify our views articulated at the July 16 hearing, that imposing additional burdens on employers undergoing distress terminations may not be in the best interests of either employees or American business.

Sincerely,

Stuart J. Brahs

Stuart J. Brahs
Executive Director

SJB:sr

cc: Honorable Marge Roukema

Mrs. ROUKEMA. Thank you, Mr. Chairman.

Mr. CLAY. Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman.

You don't have to mince words with me or do a ballet dance with me. I just have a direct question, so I won't leave here with the wrong opinion.

Mr. Moran, am I wrong in concluding that the two employer entities which you represent here are opposed to H.R. 2811, H.R. 2812, and H.R. 2813?

Mr. MORAN. You are not completely wrong, and that's not completely right. I would stand on what I've said here.

Mr. HAYES. Which is what? Tell me. I don't want to leave here confused.

Mr. MORAN. With respect to the premium increase, I think that there is broad agreement that there is some premium increase that is certainly justified at this time. I think the issue is what is needed right now and what is assumed to be needed for what is predicted to be the problem in the future, and that's really the only question that I was raising: Should we just go to what is specifically needed now and hold down the impact?

With respect to any of the reform issues, I think I have to repeat most of what I said, to go back over those. I think that there has been some substantial progress made, though, in what you have today from where we have been.

Mr. HAYES. You realize there's an inequity now in the way that generosity flows in respect to retired people in some companies. I noticed the other day where a couple of members of a board of directors who had retired from one company—I think it was Ford Motor Co., or something—they received an increase while in retirement. This is what we are trying to protect with this legislation. I think we need to correct this kind of inequity.

Mr. MORAN. Well, you are right as far as it's being even across the board. There are some companies that have a long history of voluntarily improving the benefits of their retirees, where there is no obligation whatsoever and no requirement. There are other companies that have not chosen to do that, and I think it's certainly appropriate for pension policy to encourage or mandate or whatever those kinds of things.

Mr. HAYES. Mr. Raskin, you say, in effect, in your conclusion, that you are against sin. If you read it, you can interpret it that way. But you do not feel—am I correct in saying that you do not feel that H.R. 2811, H.R. 2812, and H.R. 2813 is the way to eliminate that sin? Is that right? Do you have any other suggestion as to how you would go about it? Don't dance with me.

Mr. RASKIN. It's much closer than it was before, but it needs some more work.

Mr. HAYES. Much closer than before, but it needs some more work. Is that what you said?

Mr. RASKIN. Yes.

Mr. HAYES. All right.

And all you said was, "Me, too." Is that right?

Mr. JACKSON. No. I tend to support the legislation.

Mr. HAYES. I just want to be clear.

Mr. JACKSON. There are some parts of it that I think are pretty good. One part that they object to—the PBGC going after the sham transaction, I think that's the way we ought to be doing things. I'm tired of having all sorts of people running through metal detectors because one idiot does something wrong.

Mr. HAYES. I agree with you.

Mr. JACKSON. In the past, we proposed legislation here that would make everybody with a pension plan get stuck with something because a handful of people were playing games. This one hits the handful of people. You've got to trust that the PBGC isn't going to go overboard and try to get money from everybody and expand it beyond belief, but if you can't trust them, we'll have to change it if it doesn't work; that's all.

Mr. HAYES. Spend a little time talking to your two colleagues there, will you? [Laughter.]

Mr. CLAY. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman. I have two very quick questions.

First, if you compare the features of the plan that has been proposed by the administration and by the PBGC and was introduced yesterday by Mrs. Roukema and the Clay-Roukema plan or bill, which features do you like best out of each? Mr. Raskin or Mr. Moran, can you run down quickly those features that you prefer?

Mr. RASKIN. I just got the administration's bill this morning.

Mr. MORAN. I think if it's acceptable to you, we would prefer to respond in writing, and that's because our policy committee has not gone through those in detail, and they should be doing that within the next week or so.

Mr. BARTLETT. Mr. Chairman, will you hold the record open?

Mr. CLAY. Yes; we will hold the record open.

Mr. BARTLETT. Mr. Chairman, I have one other brief question, and you may be able to answer this today. I just want to be certain of something.

I've heard over the last several years—decade, perhaps—that one of the things that causes employers to no longer enter into defined benefit plans is the uncertainty and the ever changing nature of the law. They seem to be required by acts of Congress once a year or so to change their plans even though it doesn't change anything in reality.

Is there anything in this bill, in your judgment, that would require employers to change anything in their existing plans and therefore to go out and have to hire their attorneys to make changes in existing plans?

Mr. MORAN. Probably it's impossible to do anything without that occurring. I would suggest that the areas that are the most troublesome for employers are those that would affect the normal course of buying and selling companies, corporate reorganizations, or other similar normal business activity. That is an area where legal involvement is already substantial.

Mr. BARTLETT. Most employers don't go through corporate reorganization once a year. Would the adoption of this law trigger wholesale changes in corporate plans throughout the country?

Mr. MORAN. No. It would be the problem if you were ever going to go through a reorganization or purchase or sale of a company or

division. A company would have to face each circumstance and each circumstance would be hampered by the provisions of the bill I've discussed; moreover, buying and selling entities of corporations is an increasing phenomenon as corporations seek to position themselves in their markets.

Mr. BARTLETT. Mr. Chairman, with unanimous consent, I would like to also ask that the record be kept open.

Mr. CLAY. Without objection.

Mr. BARTLETT. I wonder if the three witnesses could think about that question and suggest if there is a way to construct a bill that would not require employers who are not faced with the problem to have to go out in a wholesale nature and change their plans just because Congress has once again changed the law.

Mr. CLAY. Thank you. We certainly want to thank you for your testimony.

There is a vote on the House floor. So the committee will recess for 10 minutes.

[Recess.]

Mr. CLAY. The subcommittee will come to order.

Our next witness will be Mr. David Walker, acting executive director of the PBGC.

Mr. Walker, without objection, your entire statement will be included in the record. You may proceed as you so desire.

STATEMENT OF DAVID WALKER, ACTING EXECUTIVE DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION, REPRESENTING THE ADMINISTRATION, ACCOMPANIED BY ROYAL S. DELLINGER, DEPUTY EXECUTIVE DIRECTOR FOR INSURANCE PROGRAMS; AND KEVIN W. PUTT, ASSOCIATE EXECUTIVE DIRECTOR

Mr. WALKER. Thank you, Mr. Chairman.

First let me introduce, if I may, two of the other executives with the PBGC that are here with me today. On my left, Royal S. Dellinger, who is Deputy Executive Director for Insurance Programs, and, on my right, Kevin W. Putt, who is Associate Executive Director of the Corporation.

Let me say, Mr. Chairman and other members of the subcommittee, that I'm very pleased today to testify on behalf of the Administration regarding the need for a premium increase and structural reforms in the PBGC's Single-Employer Program.

Since my statement has now been submitted in its entirety as part of the record, I would like to summarize some of the more important aspects of that testimony.

First, as you know, the administration recently sent proposed legislation to the Congress that addresses the Single-Employer Insurance Program. This bill, H.R. 2995, was introduced yesterday by Congresswoman Roukema and Congressman Jeffords.

The administration bill and the House package, which I refer to as H.R. 2811, H.R. 2812, and H.R. 2813, which also contains both reforms and a premium increase, are similar. Both proposals address widely recognized problems with the PBGC's Single-Employer Insurance Program—namely, a sizable and growing deficit that can only be cured through a premium increase and structural inad-

equacies that leave the program open to unwarranted claims and a corresponding burden on PBGC's premium payers. They both not only propose an increase in the single-employer premium but also seek fundamental reforms to address certain potential abuses of the insurance system.

The administration bill contains a provision to increase the premium from the current level of $2.60 per participant per plan year to $7.50 effective for plan years beginning on or after January 1, 1985. This amount is consistent with the President's budget proposal for fiscal year 1986.

In our opinion, this premium level is the lowest necessary to eliminate the current deficit over a reasonable period of time and to finance future expected claims as they are incurred. The GAO has reviewed our premium request and concurs with our assessment that $7.50 is the minimum amount we require to address our current situation.

Regarding the proposed legislative reforms, the President's budget recognizes and the Administration's bill recommends structural reforms to title IV of ERISA. The PBGC has identified three major sources of losses to the Single-Employer Program which would be addressed by the proposed reforms. These are: No. 1, the termination of insufficient plans by ongoing employers in an attempt to use the PBGC insurance system as an inappropriate financing vehicle; No. 2, the granting of minimum funding waivers in situations which pose a significant risk to plan participants and beneficiaries and the PBGC; and, No. 3, the transfer of unfunded pension liabilities by strong employers to weak employers who subsequently terminate their underfunded plans with a resulting loss to the Insurance Program.

Mr. Chairman, over the past 4 years, the Congress and the PBGC have worked with business and labor representatives to develop solutions that will protect the Insurance Program without unduly hampering the administration of plans or business transactions in general.

Unfortunately, while there is general agreement on the need for a premium increase and program reforms, a consensus has never been reached on the precise legislative changes that should be made. In the meantime, the deficit in PBGC's Single-Employer Program has grown from $94 million as of the end of fiscal year 1980 to $462 million at the end of fiscal year 1984. Consequently, the program's assets are sufficient to fund only 70 percent of its liabilities.

Further delay in enactment of necessary legislation will only serve to exacerbate the growing deficit problem and result in higher future premium levels in order to ensure the financial integrity of the program.

Mr. Chairman, about 30 million American workers are covered by the PBGC Single-Employer Program and will rely on it for their retirement income should their pension plans fail. Yet the program, without the requested premium increase, is headed for insolvency.

We urge the Congress to enact the premium increase and related legislative reforms now so that it will not be faced with a more difficult choice of providing excessively high premium increases in the

future. We do not want this insurance program to be plagued by the types of financial crises experienced by the Social Security system. We do not feel this would be fair to the Congress, the PBGC, our premium payers, or, most importantly, the plan participants and beneficiaries who rely upon our insurance protection.

In summary, the administration's bill and the House package incorporate changes that we believe address concerns expressed about prior bills. While no bill will be perceived as perfect by all parties, we believe the current bills are a fair and reasonable basis for action. Moreover, it should not be difficult to come up with workable solutions in those few areas where the bills differ.

It is time for the much needed favorable action on these bills. Action by the Congress on the premium increase and the necessary legislative reforms will provide more equity to the insurance program and decrease the need for prospective premium increases.

In addition, favorable action will put the corporation back on the road to financial integrity and will assist in the overall Federal deficit reduction effort. Without passage of this legislative package, the PBGC's deficit is projected to increase to $1.3 billion by 1989 and $5.5 billion by 1999, exclusive of any unusually large terminations with a corresponding adverse impact on the Federal deficit.

With regard to any unusually large terminations, I feel it is appropriate to inform the subcommittee that, while there is always the possibility of large terminations, at present there are a number of significantly underfunded plans which may terminate before year end. Two of these would result in losses well in excess of any prior historical loss. If these losses are incurred, they would send our deficit spiraling upwards. This situation reinforces the urgent need for a premium increase and also provides a good example of the value of the proposed legislative reforms.

Mr. Chairman, our situation should not be allowed to deteriorate further. We look forward to working together toward restoring the financial integrity of the Single-Employer Insurance Program, thereby assuring that the promises made to the 30 million American workers that we protect are kept.

I would be happy to answer any questions that you or other members of the subcommittee may have.

[The prepared statement of David Walker follows:]

PREPARED STATEMENT OF DAVID M. WALKER, ACTING EXECUTIVE DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION

Mr. Chairman: I am pleased to testify on behalf of the Administration on the premium increase and structural reforms for the PBGC's single-employer program that are contained in H.R. 2811, 2812 and 2813.

As you know, the Administration has sent proposed legislation to the Congress that addresses these issues. This bill was introduced on July 15, 1985, by Congresswoman Roukema and others in the House. The Administration bill, H.R. 2995, and H.R. 2811, which also contains both reforms and a premium increase, are similar.

Our bill contains a provision to increase the premium from the current level of $2.60 per participant to $7.50 effective for plan years beginning on or after January 1, 1985. As you know, the President's budget proposal for FY 1987 requests an increase in the premium to this level. This premium level is the lowest necessary to eliminate the current deficit over a reasonable period of time and to finance future expected claims as they are incurred. The President's budget also recommends structural reforms to Title IV of ERISA.

Both bills address widely recognized problems with the PBGC's single-employer guarantee program—namely, a sizable and growing deficit that can be cured only

through a premium increase, and structural inadequacies that leave the program open to unwarranted claims and a corresponding burden on PBGC's premium payers.

In brief, the structural problems are: (1) terminations by ongoing companies for which employer liability under the existing ERISA rules may be less costly than continued maintenance of the plan; (2) granting of funding waivers without sufficient security to assure payment on plan termination; and (3) transfers of unfunded benefits from stronger to weaker companies that subsequently fail with a resulting loss to the insurance program. Historically, these problems have accounted for a significant portion of the claims against the insurance fund. Without reforms the cost will likely accelerate in the future.

REQUESTS FOR ACTION PENDING FOR FOUR YEARS

Over the past four years, the Congress and the PBGC have worked with business and labor representatives to develop solutions that will protect the insurance program without unduly hampering the administration of plans or business transactions in general. Unfortunately, while there is general agreement on the need for reforms, a consensus has never been reached on the precise changes that should be made. Three bills, H.R. 3930 in the House and S. 1541 and 1227 in the Senate, were introduced in the last Congress but never progressed beyond the subcommittee or committee report stage.

In the meantime, the deficit in the PBGC's single-employer program has grown from $94 million as of the end of FY 1980 to $462 million at the end of FY 1984. Consequently, the program's assets are sufficient to fund only 70 percent of its liabilities. Further delay in enactment of necessary legislation will only serve to exacerbate the growing deficit problem and result in higher future premium levels in order to fund the program properly.

About 29 million American workers are covered by the PBGC single-employer program and will rely on it for their retirement income should their pension plans fail. Yet the program, without the requested premium increase, is headed for insolvency. We urge the Congress to enact the premium increase and related legislative reforms contained in H.R. 2995 now, so that it will not be faced with the more difficult choice of providing excessively high premium increases later. We do not want this insurance program to become plagued by the types of financial crises that the Congress has had to grapple with in the Social Security program.

REFORM PROPOSALS

The current House and Administration bills incorporate changes that, we believe, address concerns expressed about prior bills. While no bill will be perceived as perfect by all parties, it should not be difficult to come up with workable solutions in those few areas where the bills differ. It is time now for much needed favorable action on these bills.

I would like to briefly review the proposed reforms:

First, claims against the PBGC insurance program would be limited to employers that cannot afford to continue funding their plans. H.R. 2995 and H.R. 2811 contain specific measures of employer financial distress for this purpose, although some of the tests differ.

Employers would retain the right, which exists under current law, to reduce or eliminate future benefit accruals. Current law would be changed, however, to require that funding continue until either all benefits were fully funded or the employer could meet the specified distress standards. This change will provide greater benefit security to participants than does current law.

Second, a related reform in both our bill and H.R. 2811 would increase the PBGC's recoveries from companies that qualify for a distress termination but emerge from their financial difficulties as profitable entities. In such cases, the profitable enterprise would be required to pay the PBGC 10 percent of its annual profits for up to ten years, in order to indemnify the insurance program against losses suffered with respect to the plan. These payments would be in addition to the PBGC's current right to receive up to 30 percent of the employer's net worth. Of course, payments would cease as soon as the insurance program was fully compensated. This change would help assure that assets of the insurance fund are used exclusively for truly distress situations and that companies in temporary difficulty could not, in effect, "dump" their pension liabilities on other employers.

The third reform is intended to help protect the insurance program from losses due to funding waivers. A funding waiver is the economic equivalent of a long-term, low interest, loan from a plan to an employer, with the PBGC as the guarantor. The

Administration's bill is designed to ensure that these de facto extensions of credit are adequately secured for the benefit of plan participants and the PBGC insurance program. Our bill would impose a lien in favor of the plan on the assets of an employer that receives a funding waiver. This lien would, however, arise only if the plan has unfunded vested liabilities in excess of $500,000 or if the waiver exceeded $50,000. The IRS would have the authority to grant an exception to the lien under certain circumstances, with the concurrence of the PBGC. Once a lien was imposed, the PBGC would have the authority to release the lien should it become appropriate to do so.

This provision is less rigid than that of earlier bills, which imposed an automatic lien regardless of the amounts of the underfunding or the waiver request. The current House bills do not contain a lien provision, although I understand that comments are being solicited on a proposal developed by the subcommittee staff to address the waiver problem.

The final reform addresses abusive transfers of unfunded benefits to the insurance program. The House and Administration bills contain an express provision clarifying that maneuvers to shed pension costs through abusive transfers to the insurance program are not recognized under the law. In assessing employer liability, the bills would ignore a transaction if a principal purpose of the transaction is to evade or avoid liability. Thus in the case of an insufficient distress termination following an abusive transfer, the transferor would remain liable for the underfunding.

This provision is far simpler than the very intricate provisions of H.R. 3930 and S. 1227. There has been considerable concern that the earlier provisions, which attempted to describe a variety of abusive transactions, might miscategorize transactions with undeserved consequences for companies or the insurance program.

CONCLUSION

In conclusion, I reiterate the urgency of a premium increase and the need for structural reforms. The PBGC is already adding to the Federal deficit. The situation should not be allowed to deteriorate further.

I would be happy to answer any questions that you, Mr. Chairman, or other members of the subcommittee may have.

Mr. CLAY. Thank you.

You heard several business witnesses this morning contradict the figures that you just gave us. You estimate that the deficit will be $1.3 billion in 1989 and $5.5 billion in 1999. We had one witness this morning that claimed that there really is no need for a premium increase. He said annual claims incurred through the last 3 years have gone from $264 million down to $36 million. Why is there such a wide discrepancy in the projections from parts of the business community and from the corporation?

Mr. WALKER. First, I think it's fair to say that there have been variances in our annual claims over the past ten years of the program. The primary reason for that has been that our experience is keenly sensitive to unusually large terminations. Over two-thirds of our losses have occurred from large terminations involving losses of $10 million or more. These are difficult to project and, in fact, can fall into any one given fiscal year.

However, I would say that our financial condition speaks for itself. We have a $462 million deficit which has grown in this fiscal year. Our premium request is based upon our historical experience, smoothing any unusually favorable or unfavorable experiences in prior years. That's the best basis we have to project the future.

Finally, the GAO has reviewed the basis of our premium request and has concurred that $7.50 is the minimum amount necessary to restore financial integrity to the program.

Mr. CLAY. When you say the minimum of $7.50, would we still have that $1.3 billion deficit if we got the $7.50?

Mr. WALKER. We would be gradually reducing the existing deficit of $462 million such that over 15 years, based upon our assumptions, it would be totally eliminated. So no, we would not have that.

Mr. CLAY. With the increased premium?

Mr. WALKER. That's correct.

Mr. CLAY. So those figures are based on the $2.60?

Mr. WALKER. That's correct.

Mr. CLAY. What assurances can you give us that this Congress will not repeat the activities of past Congresses—namely, that only the corporation and this committee seem to care about what is going on? You tell us what you plan to do with some of these other committees that we have to face in this legislative process.

Mr. WALKER. First let me say that I think benefit security for American workers is very much a bipartisan issue.

Mr. CLAY. I think the two of us know that.

Mr. WALKER. I think we do, and I think that both of us are dedicated, or all of us are dedicated, toward trying to get that message across to all interested parties. As far as what we are going to do, I think we've taken a number of actions already.

First, we have attempted to communicate with interested business and labor interests to try to come up with a bill that we feel is fair and reasonable and represents a sound basis for legislative action.

Now that we have the bill and the House package, I think this is the time for all interested parties to try to work together to address any technical concerns that may have to be worked out.

As to our efforts, we will not only be dealing with, obviously, the labor committees that are very interested but also the finance committees that are involved in this legislation, and I think that you will find that this bill will receive active administration support, as evidenced by its inclusion in the President's budget and as evidenced by Labor Secretary Brock's personal expressed interest in this legislation. So hopefully a combination of these factors will lead to a successful resolution of this longstanding problem.

Mr. CLAY. Hopefully.

Thank you.

Mrs. Roukema.

Mrs. ROUKEMA. Well, Mr. Walker, I can't say enough good things about your testimony here today. I most appreciate your leadership. I think your testimony is realistic. It's incisive in terms of its analysis of the problem, and it certainly is a positive contribution to resolving any remaining differences that we may have.

As you have heard this morning, the business community is not as enthusiastic as we would like them to be, at least by virtue of their testimony. I wish that they were more realistic in viewing the problem with respect to the insurance funding shortfall.

But specifically now, I think you have made two important contributions, and I'd like to have your further comments. One, in the area of the mininum funding waiver, you have endorsed a procedure of a lien and some discretion with respect to the PBGC and the IRS, et cetera. I wonder if you could amplify on that, because I am uncertain as to whether that should be the approach or an approach that I believe the chairman is reviewing, a bonding ap-

proach, and you've heard the business community speak to that. Would you please comment on your perspective?

Mr. WALKER. First let me say that we feel it's extremely important that there be some legislative reform in the area of the minimum funding waiver process to protect not only the PBGC but also plan participants and beneficiaries.

Mrs. ROUKEMA. Excuse me. You understand that the reason our bill is not defined on that issue is not that we are not committed to a reform but we are working very carefully before that reform is put into bill language?

Mr. WALKER. I do.

Mrs. ROUKEMA. Yes.

Mr. WALKER. Let me tell you why we came up with the proposal that we did, and then I will be able to address any concerns or questions that you may have.

There has been concern expressed in the past that, to the extent that a general lien would be imposed as of the time that the waiver would be granted, automatically, without any relief, the lien could have potentially adverse consequences on the ability of a company to obtain financing, could potentially cause terminations that otherwise could reasonably be avoided. That is one extreme.

On the other hand, the existing situation, in effect, provides for waivers, which are in economic effect, lower interest, unsecured long-term loans to be financed, really, by the PBGC premium payers.

We did the following. We said there needs to be security, and we feel that that security should be in the form of a lien which is basically representative of the fact that this is an extension of credit. However, we recognize that there are situations whereby the lien may not be necessary or may be counterproductive.

So, therefore, the bill proposes that, No. 1, where the lien is unnecessary—that is, the company is strong, the plan is well funded—whatever—that it would not be imposed, or, second, where the lien would be counterproductive, and by that I mean in a situation where imposing the lien might cause a termination that could otherwise reasonably be expected to be avoided, obviously that's not our desire, the PBGC have the discretion not to impose the lien. But in other situations where it's appropriate and necesssary, it would arise, and we would administer it.

Mrs. ROUKEMA. Would you consider a bond an inappropriate burden on an employer?

Mr. WALKER. I think that the bond could be an option that, most assuredly, should be considered. I haven't reviewed the proposal in detail, and I would like to do that to provide comments for the record—

Mrs. ROUKEMA. Yes, we will leave the record open for that purpose.

Mr. WALKER. Thank you.

One concern I would have is the percentage of the waiver that would be subject to the bond.

To the extent that the bond would not cover the entire waived amount, there is a possible financial incentive for sponsors to go with that mechanism because it doesn't provide for full security as opposed to our lien which would provide for full security with pos-

sible exceptions for situations where it's unnecessary or potentially counterproductive.

But I think that we will provide our comments for the record.

Mrs. ROUKEMA. Thank you. Your comments are very helpful.

I noted with interest that you used the language "minimum amount" in referring to your recommendation of $7.50. Does that mean that you consider it precisely a minimum amount and that perhaps $8.50 would be more prudent, or would you care to amplify further?

Mr. WALKER. We think that $7.50 is adequate.

Mrs. ROUKEMA. For how far in the future?

Mr. WALKER. For the foreseeable future.

Mrs. ROUKEMA. For the foreseeable future.

Mr. WALKER. Our projections were based upon 15 years, but for the foreseeable future.

We think it is adequate to meet our needs to amortize the deficit over a reasonable period of time and finance future claims.

I think our primary concern is that we insure the financial integrity of the program. In that regard, $7.50 is what we would need if the bill was effective January 1, 1985. The actuarial equivalent of $7.50 effective January 1, 1986, is approximately $8.10. The financial integrity is our primary concern, and the $7.50 is in recognition that, No. 1, we think it's adequate, and, No. 2, we do have a congressional mandate to maintain the premium at the lowest possible level, and it is therefore consistent with that congressional mandate.

Mrs. ROUKEMA. Thank you very much.

Mr. CLAY. Thank you.

Mr. Hayes.

Mr. HAYES. Mr. Chairman, I really don't have a question. I just want to make a statement and express my own feeling as to the bipartisan approach to what I consider to be a very important piece of legislation in terms of protection of people who are going to retire or who have retired.

I notice you are acting director of the entity which you represent. I do hope that your position here may lead to your stepping up into the top capacity, or, if someone is still there, I hope their views represent yours.

The thing that I really want to convey to you, which is a continuation, I guess, of what the chairman said, is, if you would convey to your colleagues on the other side of the aisle your position, and, yes, use the arm-twisting technique if necessary to have them vote in favor and support these two bills, it would be very appreciated by many people. I've seen so many things go down the drain because some people tend to be persuaded by the wrong influences when it comes to voting.

Mr. CLAY. Thank you.

Mrs. Roukema.

Mrs. ROUKEMA. I don't know how much arm twisting we can do.

Mr. CLAY. Try.

Mrs. ROUKEMA. We'll try to use the power of intellectual persuasion.

Mr. Walker, I've asked the permission of the chairman to ask you one more question.

Not only has there been a wide discrepancy of opinion enunciated here today on the question of the notification of termination among both the employer and employee groups who testified, but also there is a difference between the Clay-Roukema bill and the Roukema-Jeffords bill.

On that issue, the administration has not recommended a pretermination notification period, I believe, in their bill. Can you explain?

Mr. WALKER. We have some notifications but not necessarily as many nor as far in advance as the ones in the Clay-Roukema bill. We are now trying to analyze the differences between the proposals, and we'd be more than happy to comment on that for the record, if you so desire.

Mrs. ROUKEMA. I would like that, because I think it's a problem that we are all grappling with, and the business and labor communities are also split on the subject, and I think we want to do the right thing and come up with the best possible proposal in these bills.

Thank you very much. I appreciate it.

Mr. CLAY. Thank you.

Mr. Walker, as I said in my opening statement, the administration bill and our bill are really not too far apart; we don't have any major differences. In the administration bill, they support the 10-percent profits-interest concept for liabilities. Does the administration have a position on the 5-percent profits-interest?

Mr. WALKER. Not at this time. As you know, it was not included in the administration bill, the reason being that we feel that it's fair, reasonable, and appropriate for sponsors to be liable to PBGC for guaranteed benefits, and that's what our bill provides for. To go beyond that, from the PBGC's standpoint, would be beyond our statutory authority, and therefore it is not included in our bill. However, the administration has not taken a formal position on that, and we will do that as part of the normal legislative process.

Mr. CLAY. Thank you.

Are there any further questions?

If not, we want to thank you for your testimony.

Without objection, we will include in the record a letter from Mr. Ray Denison of the AFL–CIO.

[The letter follows:]

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

July 15, 1985

The Honorable William Clay
Chairman, Subcommittee on Labor-Management Relations
Committee on Education and Labor
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

The AFL-CIO would most appreciate if the hearing by the Labor-Management Relations Subcommittee of the House Education and Labor Committee on July 16, 1985 concerning the proposed single-employer pension legislation, could include our views on this important subject. We would appreciate it if you would include this letter in the hearing record.

The pension plan termination insurance program established under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) was designed to protect participants against the loss of anticipated pension benefits in situations where a pension plan is terminated without sufficient assets to pay for all promised benefits. In the ten years since ERISA was enacted, the termination insurance program has proved to be remarkably successful in achieving this objective. Especially in plant closing situations, this program has been instrumental in guaranteeing that participants receive at least a portion of their promised pension benefits. The termination insurance program has played a crucial role in improving the retirement income security of millions of American workers, including the members of union affiliated with the AFL-CIO, most of whom are covered under negotiated defined benefit pension plans.

However, in our judgment legislative action is now needed to address several problems that have arisen in connection with the portion of the termination insurance program that covers single-employer pension plans. First, and most importantly, there is an urgent need to increase the premiums paid by single-employer pension plans to the Pension Benefit Guaranty Corporation (PBGC) in order to finance the termination insurance program. Largely as a result of the two severe economic recessions that our economy has experienced since 1974, the PBGC's deficit has now reached $462 million. Unless prompt action is taken to alleviate the PBGC's financing problems, we are concerned that it will eventually be unable to meet its obligations to participants. Inevitably this will lead to pressures to cut back on the protections afforded to participants under the program. Becuase of the importance of the termination insurance program to the retirement income security of workers and retirees, the AFL-CIO is vehemently opposed to any cutbacks in the benefit guarantees. In order to avoid any such reductions, we believe Congress should act promptly to increase the premiums paid by single-employer plans to the PBGC.

There is broad, bipartisan support for an increase in the PBGC premiums. President Reagan's budget proposal for fiscal year 1985 contained a request for an increase in the PBGC premium, and the budget resolutions adopted by both the House and Senate also included this premium increase. The legislation (H.R. 2812) that was recently introduced by Rep. Roukema and yourself to increase the premium to $8.50 for plan years commencing after December 31, 1985 is in line with these budget resolutions. The AFL-CIO therefore strongly supports this legislation and urges the Subcommittee to give it prompt favorable consideration.

There is also a need for certain substantive reforms in the termination insurance program as provided by H.R. 2813. Specifically, there is a need to close the loopholes in current law which allow profitable employers to dump their unfunded pension liability onto the PBGC. And there is also a need to close the loopholes that permit profitable employers to evade responsibility for paying certain pension benefits that have been earned by participants but which are not guaranteed by the PBGC.

Although the termination insurance program has helped to provide a greater measure of retirement income security for participants, unfortunately there are still situations in which many participants wind up losing a substantial portion of the pension benefits which they have earned, despite the PBGC guarantees, and despite the fact that their employer continues in business and remains highly profitable. In particular, participants have wound up losing early retirement supplements, and portions of benefit improvements that were made during the five years preceding a plan termination. In our judgment, there is simply no reason why participants should still have to suffer the loss of such benefits in situations where their employer is not experiencing economic distress and, in fact, is highly profitable. In these cases, the employer should be required to honor the pension promises it has made to workers and retirees. Accordingly, the AFL-CIO believes that any package of subtantive reforms to the termination insurance program should include provisions which address this serious abuse.

In our judgment, the legislation (H.R. 2813) which has been introduced by Rep. Roukema and yourself to reform the termination insurance program would address the problems facing both the PBGC and participants in a constructive and balanced manner. We therefore support this legislation, and urge the Subcommittee to give it favorable consideration.

The AFL-CIO is also greatly concerned about abuses that are occurring with increasing frequency in the area of pension plan terminations by the taking of so-called "excess" pension assets by employers. Reform of the Single Employer Termination Insurance Program will not be satisfactory or complete until this serious problem is dealt with. The AFL-CIO made suggestions for dealing with these termination abuses in our testimony to the Subcommittee when hearings were held on this matter on June 12, 1985. We urge the Subcommittee through separate legislation to move quickly to prevent employers from diverting pension fund assets for corporate purposes and jeoparadizing the income security of million of workers and retirees.

Though the AFL-CIO strongly supports a premium increase and reforms in the single employer termination insurance program, we are concerned about ill-advised attempts to attach extraneous amendments to this legislation as it goes through Congress. We are particularly concerned about amendments to the multiemployer termination insurance program. Hasty action on amendments changing such a complex law will only endanger the progress and stability that has been achieved and hamper further progress. For these reasons, the AFL-CIO will oppose the passage of pension legislation if it includes amendments to the multiemployer termination insurance program.

In conclusion, the AFL-CIO believes that the termination insurance program plays a crucial role in providing a greater measure of retirement income security to workers and retirees. We are prepared to work with the members of your Subcommittee in fashioning legislation that will strengthen and improve this important program,

Sincerely,

Ray Denison

Ray Denison, Director
Legislative Department

Mr. CLAY. Thank you. That concludes the hearing.
[Additional material submitted for the record follows:]

SINGLE EMPLOYER PENSION PLAN AMENDMENTS ACT OF 1985

(Mr. CLAY asked and was given permission to extent his remarks at this point in the RECORD and to include extraneous matter.)

• Mr. CLAY. Mr. Speaker, today my distinguished colleague from New Jersey [Mrs. ROUKEMA], and I are introducing the Single-Employer Pension Plan Amendments Act of 1985. The bill is urgently needed to put the Pension Benefit Guaranty Corporation [PBGC], the agency which insures that workers get their private pensions when their companies are in financial difficulty, back on a sound financial footing. The bill would strengthen the PBGC Program in two significant ways: by raising the insurance premium for single-employer plans from the current $2.60 per year per plan participant to $8.50, effective January 1, 1986, and by restructuring the Single-Employer Insurance Program to limit access to PBGC assistance only to those cases in which workers' pensions are jeopardized because their employers are in genuine financial difficulty. No changes to the multiemployer termination insurance system are made by this bill.

Over 3 years ago, the administration asked Congress to approve a single-employer premium increase. The business community strongly objected to the increase, however, unless the system was reformed. At that time at the request of former Congressman John Erlenborn, the then chairman of the Subcommittee on Labor-Management Relations, the late Phillip Burton, agreed to defer action on the premium increase request until the necessary reforms were developed and could be simultaneously enacted.

Few dispute the need for reform. The problem is deciding what type of reform is necessary and how to balance the conflicting interests of providing strong Federal controls to assure the least possible risk to the PBGC System while at the same time permitting private sector business decisionmaking processes to proceed undisturbed. For nearly 4 years, representatives of big and small business, organized labor, and the administration have been struggling to reconcile these competing interests and produce a reform package that all could support.

Last year, former Congressman Erlenborn and I introduced H.R. 3930, which was reported by the Subcommittee on Labor-Management Relations in October 1983. We announced at that time that we would wait to bring our bill before the full Education and Labor Committee until the Senate acted. We were not convinced that the Senate shared our commitment to enacting the premium increase and the reforms.

By the time the Senate Labor Committee finally acted last summer, the bill it reported had lost the support of both business and organized labor.

Since Congresswoman ROUKEMA and I are committed to assuring that both the premium increase and reform measures are enacted this year, we recently instructed the subcommittee staff to prepare legislation addressing to the greatest extent possible the concerns that all parties had expressed with the legislation introduced in the last Congress.

Because of the complicated nature of these proposals and the need for consideration of some of the proposed changes by the Committee on Ways and Means as well as the Committee on Education and Labor, we are today introducing three separate bills. Two will be jointly referred; one will be referred solely to the Committee on Education and Labor. We do this to facilitate consideration of these proposals in light of extraordinarily heavy schedule that our colleagues on Ways and Means will have this session.

One bill authorizes the premium increase only. The second contains both the premium increase and the total reform package, including the necessary conforming changes to the Inter-

nal Revenue Code. Both these bills will be jointly referred. The final bill contains ERISA changes only, and thus matters solely within the jurisdiction of the Committee on Education and Labor.

We have tried to simplify and streamline the proposals removing, for the most part, the most objectionable features of the bill introduced last Congress. To accommodate these concerns, we had to restructure the bill.

Although we have preserved the basic reforms proposed in H.R. 3930, there are two areas in which we are actively seeking input from all affected parties.

First, we have reluctantly dropped from this bill the detailed rules governing so-called "employer contingent liability." Although we remain as concerned as in the past about the problem of pension liabilities which result from a corporate spinoff transaction, we have decided to address this problem through a general grant of authority to the PBGC to ignore certain corporate transactions if a principal purpose of the transaction is to evade liability which results from a plan termination. The complexity of the rules we proposed in H.R. 3930 and the confusion which resulted from that complexity convinced us to try another approach. We would appreciate commentary on the strengths and weaknesses of the approach we are proposing and the need to develop more detailed rules to address this problem.

Second, we have temporarily removed from the bills a provison designed to remedy another problem in the current law—the granting of funding waivers. In the past, many plans which terminated without assets to pay guaranteed benefits have had a history of subtantial waived funding amounts, thus increasing the potential liability of the PBGC upon plan termination. As we understand current practices, when a waiver of the minimum funding requirements is granted, the Internal Revenue Service often requires that if a plan terminates before the waived amounts are fully repaid, those amounts become a debt due and owing to the plan at the time of termination. The PBGC has long been concerned that current practice does not provide sufficient protection to the plan in cases in which the contribution sponsor eventually goes bankrupt.

Last Congress, both H.R. 3930 and the Senate bill (S. 1227) adopted a similar approach, urged by the PBGC. Under that provision, a lien for the waived amounts would automatically arise in favor of the plan. The PBGC would have had the authority to decide whether, when, and on what collateral perfection of that claim should occur. That approach raised some serious concerns which were never fully resolved to our satisfaction.

Recently we have developed a different approach to address the original concern of PBGC. Under that approach, new rules regarding funding waivers would only apply if the cumulative total of all funding waivers exceeded $1 million. In that case, a funding waiver request could not be granted unless one of the following was furnished to the Secretary of the Treasury: evidence that a bond for 25 percent of the waived amount had been obtained or a certification by PBGC that the plan was adequately secured with respect to the waived amounts.

Because we have not fully decided which approach is best and we do not want to hold up consideration of the legislation, we are soliciting comments on these two approaches. In addition, we would welcome any other alternatives for addressing this problem. We are seeking a solution which continues to recognize that funding waivers are designed to provide relief in cases of business hardship and that not all waivers will result in additional liability for the PBGC. At the same time, we want to provide a reasonable amount of protection for the plan, and ultimately for the PBGC. We fully intend to incorporate some type of a funding waiver proposal when the bills are marked up. Immediately following the summary of the Single-Employer Pension Plan Amendments Act of 1985 are two alternative drafts of legislative language: the first incorporates the original lien proposal of H.R. 3930 and the second the bond approach described above. Interested parties are asked to comment specifically on these drafts.

Although I believe these are good bills on the whole, I have no illusions that they meet all the objectives of all the parties who have been working hard on this issue for so many years. If each of us could write with a clean slate, none of us would pen these precise proposals. But the longer we delay making these essential changes, the greater the financial pressures on the insurance system.

We invite the administration and the single-employer pension community as a whole to work with us to refine these bills. We have identified particular areas of concern in the summary which follows. We intend to work quickly. Enough time as gone by and the problems are well known. The Subcommittee on Labor-Management Relations has tentatively scheduled a hearing on these bills on July 11 in room 2175 of the Rayburn House Office Building at 10 a.m. Shortly thereafter the subcommittee will markup all three bills. We urge all affected parties to share their comments and suggestions with us as soon as possible so that, working together, we may enact this urgently needed legislation this year.

The following summary is of H.R. 2811 which contains both the premium increase and the total reform package. Section numbers, which have been included for the convenience of the reader, are not necessarily the same in all three introduced bills.

SUMMARY OF THE SINGLE-EMPLOYER PENSION PLAN AMENDMENTS ACT OF 1985 (H.R. 2811)

GENERAL POLICY OBJECTIVES

The overall policy objectives of the bill are to encourage the maintenance and growth of single-employer defined benefit plans, while at the same time increasing the likelihood that workers receive their promised pension benefits; to assure that unfunded pension liabilities are transferred onto the termination insurance system only in cases of severe business hardship; and to put the termination insurance system back on a fiscally sound basis by raising the single-employer plan premium and tightening the rules governing both access to the insurance system and liability upon plan termination.

DEFINITIONS

For purposes of clarity and consistency, key terms used throughout the bill and ERISA itself are defined in section 4 of the bill.

PREMIUMS

Effective for plan years beginning after December 31, 1985, the single-employer pension plan termination insurance premium will be $8.50 for participant per year. In addition, the process by which Congress may adopt any future premium increases is changed from a concurrent to a joint resolution procedure, in response to the decision of the U.S. Supreme Court in *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). Finally, a Congressionally appointed Advisory Council is established and directed to study the process by which single-employer premiums are established under Title IV of ERISA. Not later than two years after date of enactment of this bill, the Advisory Council must report to Congress on whether any legislative or operational changes should be made. The council will consist of individuals expert in these matters who represent affected groups: plan sponsors, employee organizations and the general public (section 5).

TERMINATION OF SINGLE-EMPLOYER PLANS BY PLAN ADMINISTRATORS

Sections 7 through 9 of the bill provide the framework for single-employer plan terminations initiated by the plan administrator. Plans may terminate only under a "standard termination" (new section 4041(b) of ERISA set out in section 8 of the bill) or under a "distress termination" (new section 4041(c) of ERISA set out in section 9). As under the current law, plans may be "frozen" without a termination occurring. Section 6(a) clarifies the authority for such a freeze and is not intended to change current law.

The general rules which apply to both a standard and distress termination appear in new section 4041(a) of ERISA (section 7 of the bill) and require prior notice to affected parties. In addition, with respect to a collectively bargained plan, special rules are provided if, within the 90 day notice priod, the plan administrator and/or the Pension Benefit Guaranty Corporation (PBGC) are notified of the pendency of a related adjudicatory proceeding challenging the termination (new ERISA section 4041(a)(3)). If such a notice is received, the plan administrator or the PBGC (as the case may be) may (solely in its discretion) either suspend the termination pending the outcome of the related proceeding, or proceed with the termination. If the termination proceeds, the plan administrator or the PBGC (as the case may be) must take such actions (e.g., segregating the assets and maintaining plan records) as may be appropriate to restore the plan if the termination were ultimately ordered to be undone in the related proceeding.

A. Standard termination

This type of termination is available to all contributing sponsors regardless of financial condition and does not require PBGC approval. Certain procedural requirements must be met, however, and certain benefit obligations to employees may not be abrogated.

Under the bill, a plan may only close out its affairs when it has sufficient assets to discharge all benefit entitlements. This is consistent with the overall policy goal of the bill to increase the likelihood that participants receive their full promised and earned benefits.

In general, benefit entitlements include only those benefits for which the participant or beneficiary has satisfied (as of the date of plan termination) all eligibility requirements under the plan. For instance, a disability retirement benefit would only be considered a benefit entitlement with respect to a particular participant if the participant was disabled and satisfied all other requirements under the plan (e.g., age and/or service) for entitlement as of the date the plan terminated. If the participant was not disabled as of that date, even though all other requirements had been met, the disability retirement benefit would not be considered a benefit entitlement. Likewise, in the case of a plan which provides a special plant closing benefit, that benefit would not be considered a benefit entitlement unless the plant closing occured prior to the date of plan termination.

B. Distress termination

Consistent with the overall policy goal of the bill to limit access to the termination insurance system to plans of companies in genuine financial difficulty, PBGC would only be required to pay guaranteed benefits for plans who meet one of four threshold tests (new section 4041(c)(2)(B)):

1. A funding waiver has been granted by the Internal Revenue Service with respect to the terminating plan, in at least three of the five plan years immediately preceding the proposed termination and, with respect to each plan maintained by the contributing sponsor and each substantial member of its controlled group, in at least one of the three prior plan years;

2. The contributing sponsor and each substantial member of its controlled group has filed a petition (which has not been dismissed or converted to a reorganization proceeding) seeking liquidation under federal or state bankruptcy law;

3. The contributing sponsor provides substantial evidence to the PBGC that unless a distress termination is granted, the sponsor and each substantial member of its controlled group will be unable to pay their debts when due and unable to continue in business.

4. With respect to all plans of the contributing sponsor and each substantial member of its controlled group, the costs of providing pension coverage have become unreasonably burdensome, solely as a result of a decline in the covered workforce. A contributing sponsor would have to demonstrate this burdensomeness by showing that both the contribution-wage ratio and the contribution-income ratio for the plan year in which the termination occurs is at least double those ratios for the preceding plan year.

For purposes of these tests, a substantial member of a controlled group is a person whose assets comprise 5% or more of the total assets of the controlled group.

Once one of these tests is met, the procedure followed by the PBGC to effectuate the termination is intended to be generally the same as current law. Determinations of sufficiency and net worth must be made before any distress termination is complete.

TERMINATIONS BY THE CORPORATION

The PBGC's authority to terminate a plan involuntarily under section 4042 is generally unchanged.

LIABILITY FOLLOWING PLAN TERMINATION

Once a plan has been terminated in a distress termination (under new section 4041(c) of ERISA) or by the PBGC under it own authority (section 4042), persons may be liable to the PBGC and, in certain instances, to participants and beneficiaries. That liability is described in section 4062 of ERISA (section 11 of the bill). Those who are liable (each contributing sponsor and all members of their controlled groups) are identified in subsection (a) of section 4062. The amount of liability to PBGC and participants is set forth in subsections (b) and (c) respectively.

A. Liability to PBGC

The contributing sponsors and all members of their controlled groups are generally liable for the full underfunding of the plan with respect to guaranted benefits. In addition, such persons are liable for any "funding shortage" (as defined in new section 4062(d)(1) of ERISA) which includes outstanding amounts of waived funding. Payment in full of this liability is due as of the date of termination, except if the total liability. exceed 30% of the collective net worths of all liable parties. In that case, the excess of liability over and above the 30% may be paid under the profits schedule.

Payments under the profits schedule are made for a period of ten liability payment years following the year in which the plan is terminated. If any liable person has no profits in any of the liability payment years, then no payments to the PBGC are required for that year. The amount of each payment is limited to 10% of the pretax profits of all liable persons. Of course, liability to continue to make payments under the profits schedule is extinguished at the earlier of the completion of the ten-liability-payment-year period or when payment in full of the liability to the PBGC is made.

B. Liability to Participants and Beneficiaries

If, as of the date of termination, there is an outstanding amount of benefit entitlements under the plan (as defined in new section 4001(a)(19)), contributing sponsors and all members of their controlled group who are liable under section 4062(a) have an additional liability to participants and beneficiaries. Such persons are required to contribute to a trust administered by a trustee, whose duties and responsibilities are detailed in new ERISA section 4049.

Contributions to the section 4049 trustee are limited to 5% of pretax profits calculated and payable in the same fashion as liability to the PBGC under the profits schedule described above. Of course, it is possible that persons who, at the time of termination, would have no additional liability to the PBGC because assets have been sufficient to pay guaranteed benefits, may still have liability to participants and beneficiaries under section 4062(c).

The bill would require the section 4049 trustee, using the actuarial information provided to the PBGC by the liable parties, to determine that total amount of unpaid benefits entitlements for each participant and beneficiary which will not be paid either by the PBGC as guaranteed benefits or by the plan upon termination. Each year, as payments come into the trust, the section 4049 trustee will pay the amounts out (on a prorata basis if necessary) in order to reduce the total outstanding amount for each participant and beneficiary. These payment are designed to pay whenever possible the difference between vested and guaranteed benefits.

The requirement to contribute to the trust is limited in duration to a period of ten liability payment years after the year in which the plan terminated or, if earlier, the year in which all liability to participants and beneficiaries is extinguished. Of course, the section 4049 trustee would not be required to set up the trust until the first liability payment year in which contributions must be made under the profits schedule. therefore, if no liable person has profits until, for example, the fifth liability payment year, no trust need be established to receive the contributions until that time.

ENFORCEMENT

Section 14 of the bill contains the enforcement provisions. The bill adds a new section 4070 to ERISA in which is consolidated all rights of contributing sponsors, or participants, and of others to enforce certain Title IV provisions.

EFFECTIVE DATE

The provisions of the bill are generally effective on the date of enactment.

ALTERNATIVE No. 1

SEC. . LIEN IN FAVOR OF SINGLE-EMPLOYER PLAN ARISING FROM GRANTING OF WAIVER OF MINIMUM FUNDING STANDARD OR EXTENSION OF AMORTIZATION PERIOD.

(a) IN GENERAL.—Part 3 of subtitle D of title IV (as designated by section 111 of this Act) is amended by adding after section 4094 (as so designated) (29 U.S.C. 1368) the following new section:

"LIEN IN FAVOR OF SINGLE-EMPLOYER PLAN ARISING FROM GRANTING OF WAIVER OF MINIMUM FUNDING STANDARD OR EXTENSION OF AMORTIZATION PERIOD

"SEC. . (a) TREATMENT OF WAIVED FUNDING DEFICIENCIES AND DECREASES IN MINIMUM FUNDING STANDARD AS DEBT DUE AND OWING TO THE PLAN.—

"(1) GENERAL RULE.—In any case in which a waiver or extension is granted (on or after the date of the enactment of this section) with respect to a single-employer plan under section 303 or 304 of this Act and section 412 (d) or (e) of the Internal Revenue Code of 1954, the amount of the waived funding deficiency arising from the waiver (including interest) and the amount of the decrease in the minimum funding standard arising from the extension (including interest) shall be considered a debt due and owing to the plan by the contributing sponsors of the plan and the members of their controlled groups (hereafter in this section referred to as the 'debtors').

"(2) WAIVERS AND EXTENSIONS NOT CONSIDERED EXTENSIONS OF CREDIT FOR CERTAIN PURPOSES.—Notwithstanding paragraph (1), a waiver or extension referred to in paragraph (1) shall not be considered an extension of credit for purposes of sections 406 and 407 of this Act or section 4075 of the Internal Revenue Code of 1954.

"(b) ESTABLISHMENT OF LIEN.—

"(1) IN GENERAL.—A lien securing the debt described in subsection (a) shall arise in favor of the plan on the date of the waiver or extension granted with respect to the plan. The lien shall be on all property and rights to property, whether real or personal, of each debtor.

"(2) DURATION OF LIEN.—Except as provided in subsection (d), the lien imposed by paragraph (1) shall continue until—

"(A) the amount on which the lien is based is paid to the plan in full, or

"(B) the plan obtains an interest in property which the corporation determines is sufficient to secure such amount.'

"(3) PRIORITY OF LIEN.—Except as otherwise provided under this section, the priority of a lien imposed under paragraph (1) shall be determined in the same manner as under section 6323 of the Internal Revenue Code of 1954 with respect to liens thereunder. Such section 6323 shall be applied for purposes of this section by disregarding subsection (g)(4) and by substituting—

"(A) 'lien imposed by section 4095(a) of the Employee Retirement Income Security Act of 1974' for 'lien imposed by section 6321' each place it appears in subsections (a), (b), (c)(1), (c)(4)(B), (d), (e), and (h)(5);

"(B) 'as directed by the corporation' for 'by the Secretary' in subsection (a);

"(C) 'the payment of the amount on which the lien is based' for 'the collection of any tax under this title' in subsection (b)(3);

"(D) 'a debtor whose property is subject to the lien' for 'the taxpayer' in subsections (b)(8), (c)(2)(A)(i) (the first place it appears), (c)(2)(A)(ii), (c)(2)(B), (c)(4)(B), and (c)(4)(C) (in the matter preceding clause (i));

"(E) 'such debtor' for 'the taxpayer' in subsections (c)(2)(A)(i) (the second place it appears) and (c)(4)(C)(ii);

"(F) 'payment of the loan value of the amount on which the lien is based is made to the single/employer plan' for 'satisfaction of a levey pursuant to section 6332(b)' in subsection (b)(9)(C);

"(G) 'the corporation' for 'the Secretary' in subsection (b)(9)(C);

"(H) 'section 4095(a) lien' for 'tax lien' each place it appears in subsections (c)(1), (c)(2)(A), (c)(2)(B), (c)(3)(B)(iii), (c)(4)(B), (d), and (h)(5); and

"(I) 'the date on which the lien is first filed' for 'the date of the assessment of the tax' in subsection (g)(3)(A)

"(4) APPLICATION OF BANKRUPTCY PROVISIONS.—In any case under title 11, United States Code, any lien imposed under this subsection and perfected within the meaning of section 545(2) of such title shall be treated as securing an allowed claim under section 506 of such title, subject only to the limitations imposed by section 6323 of the Internal Revenue Code of 1954. Any claim for the unpaid amount of waived funding deficiencies arising from waivers or the unpaid amount of decreases in the minimum funding standard arising from extensions for which liens have not been perfected shall be treated in the same manner as a claim for a tax on income having priority under section 507(a)(6) of such title. In the case of any insolvency proceeding (other than a case under such title 11), any lien imposed under this subsection shall be treated, for purposes of section 3713 of title 31, United States Code, in the same manner as a lien securing a debt due and owing to the United States to which such section applies.

"(5) TREATMENT AS JUDGMENT LIEN ARISING AT TIME OF FILING OF NOTICE.—For purposes of applying section 6323(a) of the Internal Revenue Code of 1954 to determine the priority among the lien imposed under paragraph (1), the lien imposed by section 4094 of this Act, and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

"(c) SPECIAL RULE FOR COMPOSITE SINGLE-EMPLOYER PLANS.—

"(1) IN GENERAL.—In the case of a lien arising under subsection (b) with respect to a composite single-employer plan, the amount of the waived funding deficiency arising from the waiver described in subsection (a)(1) (plus interest) or the amount of decrease in the minimum funding standard arising from the extension described in such subsection (a)(1) (plus interest) which is secured by the lien on the property of each contributing sponsor and all members of such sponsor's controlled group shall be the full amount of such waived funding deficiency (plus interest) or decrease in minimum funding standard (plus interest), multiplied by a fraction—

"(A) the numerator of which is the amount of the contributions required under the plan from such contributing sponsor for the plan year for which the waiver or extension is granted, and

"(B) the denominator of which is the amount of the total contributions required under the plan from all contributing sponsors for the plan year for which the waiver or extension is granted.

"(2) COMPOSITE SINGLE-EMPLOYER PLAN.—For purposes of this subsection, the term 'composite single-employer plan' means a single-employer plan of which there are two or more contributing sponsors, not all of whom are within the same controlled group.

"(d) PERFECTION AND FILING.—The plan administrator shall perfect, and file notice of, a lien imposed by this section with respect to the plan only to the extent directed to do so by the corporation. The corporation may direct such perfection and filing only if—

"(1) the aggregate outstanding amount of waived funding deficiencies and decreases in the minimum funding standard with respect to the plan arising from waivers and extensions described in subsection (a)(1) exceeds $50,000, or

"(2) the amount of unfunded nonforfeitable benefits under the plan exceeds $500,000.

"(e) EARLY RELEASE OF LIEN.—Notwithstanding subsection (b)(2), a lien imposed by this section shall be released at such time, to such extent, and under such conditions as the corporation determines necessary to ensure that the interests of the plan participants and beneficiaries and of the corporation are adequately protected.

"(f) PERFECTION AND FILING BY THE CORPORATION UPON FAILURE OF PLAN ADMINISTRATOR.—In any case in which the corporation directs a plan administrator to perfect and file a lien in accordance with subsection (c) and such plan administrator fails to do so, the corporation may in its discretion, perfect and file such lien on behalf of the plan.

"(g) RESPONSIBILITY FOR COSTS.—Any costs incurred in the perfection, filing, and release of a lien imposed by this section shall be paid by the debtors.

"(h) REQUIREMENT TO PROVIDE INFORMATION.—The debtors shall provide the corporation with such information as the corporation considers necessary to perform its responsibilities under this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 303(d) (29 U.S.C. 10003(d)) is amended—

(A) by inserting "(1)" before "For corresponding"; and

(B) by adding at the end thereof the following new paragraph:

"(2) For provisions relating to liens in favor of single-employer plans covered by the title IV of this Act arising from granting of waivers of the minimum funding standard, see section 4095 of this Act.".

(2) Section 304 (29 U.S.C. 1004) is amended by adding at the end thereof the following new subsection:

"(e) For provisions relating to liens in favor of single-employer plans covered by title IV of this Act arising from the granting of extensions under subsection (a), see section 4095 of the Act.".

ALTERNATIVE NO. 2

SEC. . SECURITY FOR WAIVERS OF MINIMUM FUNDING STANDARD AND EXTENSIONS OF AMORTIZATION PERIOD.

(a) IN GENERAL.—Subtitle D of title IV is amended by adding after section 4068 (29 U.S.C. 1368) the following new section:

"SECURITY FOR WAIVERS OF MINIMUM FUNDING STANDARD AND EXTENSIONS OF AMORTIZATION PERIOD

"SEC. . (a) IN GENERAL.—If, after any waiver of the minimum funding standards granted with respect to the plan under section 303 of this Act or section 412(d) of the Internal Revenue Code of 1954 or any extension of an amortization period granted with respect to the plan under section 304 of this Act or section 412(e) of such Code, the sum of—

"(1) all waived funding deficiencies arising from waivers (if any) granted with respect to the plan under such sections 303 and 412(d) before, on, or after the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1985, and

"(2) all reductions in the amortization charge arising from extensions granted with respect to the plan under such sections 304 and 412(e) before, on, or after such date,

would equal or exceed $1,000,000, acceptance by the plan sponsor of any such waiver or extension without having obtained adequate security shall be treated as a breach of a fiduciary duty by the plan sponsor under part 4 of subtitle B of title I.

"(b) ADEQUATE SECURITY.—Adequate security described in this subsection consists of—

"(1) a bond covering a contributing sponsor of the plan as provided in subsection (c), or

"(2) a written contract, to which the plan, all contributing sponsors of the plan and members of their controlled groups, and the corporation are parties, setting forth the terms prescribed in subsection (d).

"(c) BONDING REQUIREMENTS.—A contributing sponsor of a plan is bonded as provided in this subsection if—

"(1) the amount of the bond is not less than 25 percent of the sum described in subsection (a),

"(2) the bond provides protection to the plan against inability of the contributing sponsor to make the plan whole for the amount of the waived funding deficiency arising from the waiver or the reduction in the amortization charged arising from the extension,

"(3) the bond has as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code,

"(4) the bond is in a form or of a type approved by the Secretary of the Treasury, including individual bonds or schedule of blanket forms of bonds which cover a group or class, and

"(5) the bond is not procured from a surety or other company, or through an agent or broker, in whose business operations such plan or any party in interest (within the meaning of section 3(14)) in such plan has any control or significant financial interest, direct or indirect.

"(d) WRITTEN CONTRACT REQUIREMENTS.—A written contract referred to in subsection (b)(2) sets forth the terms prescribed in this subsection if—

"(1) the contract provides that the sum described in subsection (a) would constitute, upon the granting of the waiver or extension, a debt due and owing the plan by the

contributing sponsors of the plan and the members of their controlled groups, and

"(2) the contract provides for interest on such debt and security for such debt which the corporation considers adequate to secure the plan for the waiver or extension.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to acceptances by plan sponsors of—

(1) waivers of the minimum funding standards with respect to a single-employer plan under section 303 of the Employee Retirement Income Security Act of 1974 and section 412(d) of the Internal Revenue Code of 1954, and

(2) extensions of an amortization period granted with respect to a single-employer plan under section 304 of such Act and section 412(e) of such Code,

granted by the Secretary of the Treasury on or after the date of the enactment of this Act.●

National Association
of Manufacturers

RANDOLPH M HALE
Vice President and Manager
Industrial Relations Department

August 8, 1985

Chairman William Clay
House Subcommittee on Labor-Management Relations
2451 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Clay:

The National Association of Manufacturers is pleased to submit for the record the enclosed testimony relevant to the July 16 hearings held on H.R. 2811, a bill to improve the single employer plan termination insurance program established under Title IV of the Employee Retirement Income Security Act of 1974.

Should you or any Subcommittee members need any clarification on NAM's position regarding this issue, please do not hesitate to contact me or Victoria Caldeira, Associate Director, Employee Benefits, at 637-3137.

Sincerely,

C. Randolph Hale

National Association of Manufacturers

TESTIMONY OF

The National Association of Manufacturers

on

H.R. 2811

Before the Labor/Management Subcommittee of the

Education and Labor Committee

United States House of Representatives

July 16, 1985

1776 F Street, N.W. • Washington, D.C. 20006 • (202) 626-3700

Chairman Clay and members of the Labor-Management Subcommittee/House Education and Labor Committee, this statement on H.R. 2811 is submitted on behalf of the National Association of Manufacturers. The NAM is a voluntary business association of over 13,500 companies, of every size and industrial classification, located in every state. Our members employ 85 percent of the workers in manufacturing employment and produce over 80 percent of the nation's manufactured goods. NAM also has an affiliation with 158,000 businesses through its Association's Council and the National Industrial Council.

The NAM commends you, Mr. Chairman, as well as Mrs. Roukema, for your leadership in seeking solutions to the problems facing the single employer plan termination insurance program administered by the Pension Benefit Guaranty Corporation (PBGC). The PBGC has requested premium increases in both the 97th Congress and the 98th Congress. The NAM has repeatedly testified in favor of a necessary increase, along with structural reforms that would put the single employer plan termination insurance program on a sounder financial footing.

The following statement will focus on the four areas of primary concern to the subcommittee, as stated in a July 11, 1985 letter from the Counsel for Pensions, Phyllis C. Borzi. Additionally, other comments on sections of H.R. 2811 will be offered here in anticipation that reform may become a reality in the 99th Congress.

Premium Increase

NAM believes that any PBGC premium increase should be coupled only with those reforms to the insurance system that would strengthen the fiscal soundness of the PBGC. Other reforms which relate to the possible expansion of participant rights or employer obligations, unrelated to preserving the fiscal soundness of the PBGC, should not be addressed in Title IV reform legislation.

With respect to any premium increase, NAM recognizes PBGC's need for an increase in the employer premium, but we remain unconvinced that a tripling of the current premium is warranted at this time. Therefore, NAM strongly favors linking a temporary premium increase with the report of a new advisory council on premiums.

Specifically, NAM would support (1) a premium increase to $6.00 for a two-year period effective January 1, 1986, to December 31, 1988; and (2) the appointment of a council of experts, including experts in the accounting and actuarial fields, to report to Congress by the fall of 1987. That report should include the council's findings and recommendations regarding, among other things, a risk-related premium. The council's recommendations regarding a permanent increase in premium amount must be demonstrably justified with stated actuarial assumptions, amortization periods, existing and projected liabilities. Congress must act on the council's recommendations by December 31, 1988, or the premium increase expires.

Contingent Liability

NAM supports the concept of contingent liability when addressed solely in the context of a distress termination. The right to challenge corporate actions and assert liability should reside exclusively with the PBGC and should only be used to protect itself from employer transactions to evade pension liabilities. However, certain safe harbors must be provided to assure that employers are not unduly restricted in their day to day business transactions.

In the case of a sale, the funding status of the plan as well as the financial condition of the buyer, both determined as of the effective date of the sale, should be primary considerations in determining any such safe harbors. Furthermore, since the PBGC will have access to the Annual Report Form 5500 each year, any PBGC challenge to the seller should be commenced within two years of the closing date of any sale.

Minimum Funding Waivers

The financial problem for the PBGC triggered by the Internal Revenue Service (IRS) granting of minimum funding waivers and extensions of amortization periods would best be addressed, in NAM's opinion, through reform of the fundamentals which cause this problem. Restrictions governing the granting of funding waivers and extensions of amortization periods must be established, so the PBGC is not placed in such a disadvantageous and precarious

financial position. Whether a lien or a bond is the better requirement, is not clear to us. The NAM believes there may be some merit in giving the employer the ability to choose between the lien or the bond approach.

Definitions

NAM members are uncertain as to the distinction between "benefit entitlements", (H.R. 2811, Sec. 4(4)), and "nonforfeitable benefits", (ERISA, Sec. 3(19)). If both definitions are substantially the same, the term "nonforfeitable benefits," since it already appears in the law, would be preferable. As indicated in response to question number one, Title IV reform legislation should be limited to strengthening PBGC's role of insuring guaranteed benefits, as provided for in ERISA Sec. 4022.

Additional Concerns

We applaud the clarification in H.R. 2811, Section 6, that explicitly states that a freeze is not a termination. This clarification allows employers to carry out normal business activities without unduly burdensome reporting requirements.

Concerning congressional approval of a premium increase, concurrent or joint resolutions are inappropriate mechanisms as opposed to that careful and deliberate consideration that would occur were the normal legislative route used.

Regarding Section 7, Notice to Employers, we recognize the need to notify existing parties, but question the necessity of additional requirements, unless they would not conflict with, and would be less burdensome than those requirements already set forth in Title IV and the IRS code.

Furthermore, we strongly oppose the inclusion of both the Section 7, Related Adjudicatory Proceeding, and the Section 14, Additional Enforcement Authority. Again, such sections should not be addressed in Title IV.

It should be noted that the NAM also opposes any adjudicatory proceedings to suspend terminations, regardless of where such proceedings may appear in law. This type of action would unduly interfere with employer prerogatives in the best interest of the corporation and, ultimately, in the best interest of corporate employees. Likewise, any attempt to extend benefit obligations beyond what is currently guaranteed by the PBGC should not occur in Title IV, Section 8. Subsequently, the NAM does not support any Title IV reform pertaining to the standard termination procedure.

The NAM endorses the conditions set forth for a distress termination in Section 9, with the exception of provision number four, which is unclear in its application of contribution-wage and contribution-income ratio requirements. Section 11, which establishes a ten year, ten percent pre-tax profits schedule, for

liabilities to the PBGC greater than thirty percent of the networth of liable parties, seems reasonable. However, we strongly oppose the imposition of liabilities beyond the PBGC guaranteed level, under Title IV provisions.

The NAM hopes that the comments offered will be helpful to the subcommittee. We appreciate the opportunity to submit this statement on H.R. 2811 and look forward to working with the Subcommittee toward achieving a fiscally healthy Pension Benefit Guaranty Corporation.

OCAW

Oil, Chemical & Atomic Workers
International Union, AFL-CIO

Joseph Misbrener, President
Michael Ricigliano, Secretary-Treasurer
L. Calvin Moore, Vice President
Robert E. Wages, Vice President

International Offices:
255 Union Blvd., Lakewood, CO 80228
303/987-2229

Mail: P.O. Box 2812, Denver, CO 80201

April 2, 1985

APR 8 1985

The Honorable William H. Clay
Subcommittee on Labor Management
Relations
2451 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Clay:

I write in behalf of members of Local 3-552 of the Oil, Chemical and Atomic Workers International Union. These men worked at a coke plant owned and operated in Ironton, Ohio, by Ironton Coke Corporation, a wholly owned subsidiary of McLouth Steel Corporation. Ironton Coke went bankrupt several years ago, laid-off all of its hourly employees, and terminated its collectively bargained pension plan for hourly employees. For three years before going under, Ironton Coke received from the IRS routine waivers of its duty to fund its pension obligations fully. As a result, when Ironton Coke terminated its pension plan, the plan was seriously underfunded and could not pay benefits promised under its provisions. The pension plan is now being administered by the Pension Benefit Guaranty Corporation.

The Ironton Coke pension plan provides a generous unreduced early retirement pension for employees whose combined age and years of service total 80 or more. For employees within three years of this "80 point" pension, Article IX(4)(a) of the Ironton Coke pension plan credits the period following layoff as the remaining pension service necessary to qualify. At the time Ironton Coke terminated its pension plan, 30 Ironton Coke employees were within three years of eligibility for an 80 point pension. These men were therefore automatically entitled to the additional pension credit necessary to qualify them for an unreduced early retirement pension.

Regardless of these provisions, the PBGC has refused to pay 80 point pensions to men qualifying under Article IX(4)(a). The PBGC has done so asserting that ERISA prohibits the PBGC from honoring accruals of pension credit for any period following the termination of a pension plan. Under the PBGC's interpretation of the law an average employee experiences a 78% decrease in benefits to which he is entitled under the pension plan, if he retires early.

Deprivation of contractual early retirement benefits is no theoretical matter. Many of those entitled to unreduced early retirement pensions under the provisions of Article IX(4)(a) need money right now. They are middle-aged with health problems attributable to their long service in coke oven employment. Three years after their layoff by Ironton Coke, they remain unemployed or underemployed. In the depressed economy facing industrial workers today, they have little prospect of suitable new employment. These men relied upon the early retirement pensions negotiated by their union to provide them with a decent standard of living in just the circumstances they now face.

The OCAW brought the plight of Local 3-552's members to the attention of the late Congressman Carl Perkins. Chairman Perkins took a personal interest in their case, and with his help, we were able in the last session of Congress to obtain language in a supplemental Appropriations report indicating congressional desire to have the PBGC pay the benefits we seek. Nevertheless, the PBGC has refused to change its position.

We are not the only union with this problem. Other unions have been successful in negotiating provisions granting post-layoff pension credit. Many employees who have qualified under these provisions have also been denied the benefits they earned by the PBGC. Thus, the problem about which I write is not unique.

The OCAW believes that only explicit statutory language can clarify the duty of the PBGC to recognize the validity of valuable pension benefits which employees have bargained for, earned, and given up valuable alternative benefits to obtain. The OCAW understands that your subcommittee is holding a series of hearings concerning needed changes in ERISA. We ask that members of Local 3-552 and an administrative officer of the International Union be given the opportunity to testify concerning the situation in which they find themselves and the need for statutory reform to correct present PBGC policy. I appreciate your consideration of this request.

Sincerely,

Joseph Misbrener

JOSEPH MISBRENER
President

cc: Congressman Clarence E. Miller
Nolan Hancock, Legislative Director, OCAW
James Cronin, General Counsel, OCAW
Gary Tyo, President, Local 3-552
Gerald H. Deer, Local 3-552
Richard M. Bank, Esq.

Pension Benefit Guaranty Corporation
PBGC
2020 K Street, N.W., Washington, D.C. 20006-1806

AUG - 5 1985

Office of the Executive Director

Honorable William L. Clay
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Clay:

I am writing in response to your recent request for information regarding the concerns raised by Mr. Joseph Misbrener, President of the Oil, Chemical and Atomic Workers International Union, AFL-CIO, about the status of certain benefits in the terminated Ironton Coke Corporation pension plan for hourly employees, and for information regarding the status of the plan.

In his letter to you, dated April 2, 1985, Mr. Misbrener stated that the plan contained an unreduced early retirement benefit for employees whose combined age and years of service total 80 or more. For employees who are laid off within 3 years of attaining this "80 point" pension, the plan credits time after the layoff as the remaining pension service necessary to qualify for the unreduced pension.

A number of Ironton Coke employees were laid off within this 3 year period. However, because the plan terminated before the requisite period of time passed to qualify them for the unreduced early retirement pension, they did not have a nonforfeitable right to it as of the date of plan termination. Under section 4022(a), the PBGC guarantees only benefits to which a participant has a nonforfeitable right as of the date of plan termination. Therefore, the PBGC does not have the statutory authority to guarantee the unreduced 80 point pension for these participants.

The PBGC is in the process of calculating final guaranteed benefits payable to participants of the Ironton Coke hourly plan. We are currently making benefit payments to participants who qualify for a current pension at the estimated guaranteed benefit level. Participants who do not qualify for the 80 point pension are being paid as of the earliest date they meet the requirements for a guaranteed pension.

I appreciate your concern over this matter and hope that this information is helpful to you.

Sincerely yours,

David M. Walker, C.P.A.
Acting Executive Director

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

○